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CHAPTER 1

UNIFORM PROBATE CODE

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Part 1
Short Title, Definitions, Construction, and General Provisions

72-1-101. Short title. Chapters 1 through 5 and chapter 16, part 6, shall be known and may be cited as the "Uniform Probate Code".

History: En. 91A-1-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-101.

72-1-102. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-1-102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-102.

72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 5, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an insurance or annuity policy, an account with POD designation, or a security registered in beneficiary form (TOD);

(ii) a pension, profit-sharing, retirement, or similar benefit plan; or

(iii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a trust beneficiary; a beneficiary of a beneficiary designation; a donee, appointee, or taker in default of a power of appointment; and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an insurance or annuity policy, an account with POD designation, or a security registered in beneficiary form (TOD);

(b) a pension, profit-sharing, retirement, or similar benefit plan; or

(c) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Clerk" or "clerk of court" means the clerk of the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed

property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(26) "Issue" of a person means a descendant as defined in subsection (10).

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) “Minor” means a person who is under 18 years of age.

(31) “Mortgage” means any conveyance, agreement, or arrangement in which property is used as security.

(32) “Nonresident decedent” means a decedent who was domiciled in another jurisdiction at the time of death.

(33) “Organization” means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) “Parent” includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) “Payor” means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) “Person” means an individual, a corporation, an organization, or other legal entity.

(37) “Personal representative” includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. “General personal representative” excludes special administrator.

(38) “Petition” means a written request to the court for an order after notice.

(39) “Proceeding” includes action at law and suit in equity.

(40) “Property” includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) “Protected person” has the meaning provided in 72-5-101.

(42) “Protective proceeding” has the meaning provided in 72-5-101.

(43) “Security” includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

(44) “Settlement”, in reference to a decedent’s estate, includes the full process of administration, distribution, and closing.

(45) “Special administrator” means a personal representative as described by chapter 3, part 7.

(46) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(47) “Successor personal representative” means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

(49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(50) "Survive", except for purposes of Title 72, chapter 6, part 3, means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52) "Testator" includes an individual of either sex.

(53) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26 of this title; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(55) "Ward" means an individual described in 72-5-101.

(56) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

History: En. 91A-1-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-201; amd. Sec. 3, Ch. 494, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 494 inserted definitions of agent, beneficiary designation, descendant, governing instrument, joint tenants with right of survivorship, payor, survive, and testator; in introductory clause, after "parts", inserted "or sections" and substituted "chapters 1 through 5" for "this code"; in definition of beneficiary inserted (c) concerning a beneficiary of a beneficiary designation and inserted (d) concerning a beneficiary designated in a governing instrument; in definition of child, after "under", substituted "chapters 1 through 5" for "this code" and inserted last clause excluding certain descendants; in definition of court substituted "district court in this state" for "court" and deleted last sentence that read: "This court in this state is known as district court"; in definition of devisee, at beginning of second sentence, inserted "For purposes of chapter 3"; in definition of estate substituted "chapters 1 through 5" for "this code"; in definition of foreign personal representative substituted "appointed by" for "of"; in definition of heirs, near beginning, inserted exception clause and after "spouse" inserted "and the state"; in definition of interested person, at end of first sentence, deleted "which may be affected by the proceeding"; in definition of issue substituted "a descendant as defined in subsection (10)" for "all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code"; in definition of organization, after "partnership", inserted "joint venture", after "association" deleted "two or more persons having a joint or common interest", and at end, before "entity", inserted "or commercial"; in definition of parent substituted "chapters 1 through 5" for "this code" and at end inserted clause excluding certain individuals; in definition of state, before "possession", inserted "insular" and after "subject to the" substituted "jurisdiction" for "legislative authority"; in definition of successors, at end, substituted "chapters 1 through 5" for "this code"; in definition of trust, in third sentence, inserted reference to trust accounts; in definition of will, at end, inserted "nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession"; and made minor changes in style.

72-1-104. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

History: En. 91A-1-103 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-103.

Cross-References

Community property — disposition upon death, 72-9-107.

72-1-105. Construction against implied repeal. This code is a general act intended as a unified coverage of its subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

History: En. 91A-1-105 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-105.

72-1-106. Uniform Probate Code to take precedence. Should any provision of this code conflict with any provisions of other statutes of the state of Montana relating to probate, guardianship, or other subjects incorporated in this code and such other statute or statutes was or were adopted prior to the enactment of this code, the provisions of this code shall be deemed to be controlling.

History: En. 91A-6-104 by Sec. 19, Ch. 365, L. 1974; R.C.M. 1947, 91A-6-104.

72-1-107. Effective date — applicability. (1) This code takes effect on July 1, 1975.

(2) Except as provided elsewhere in this code, on July 1, 1975:

(a) the code applies to any wills of decedents dying thereafter;

(b) the code applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent, except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(c) every personal representative, including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this code and is subject to the duties imposed with respect to any act occurring or done thereafter;

(d) an act done before July 1, 1975, in any proceeding and any accrued right are not impaired by this code. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1975, the provisions shall remain in force with respect to that right.

(e) any rule of construction or presumption provided in this code applies to instruments executed and multiple-party accounts opened before July 1, 1975, unless there is a clear indication of a contrary intent.

History: En. 91A-6-102 by Sec. 3, Ch. 365, L. 1974; R.C.M. 1947, 91A-6-102.

72-1-108. Evidence of death or status. In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death or status apply:

(1) Death occurs when an individual is determined to be dead under 50-22-101.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(4) In the absence of prima facie evidence of death under subsection (2) or (3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(5) An individual whose death is not established under subsections (2) through (4), who is absent for a continuous period of 5 years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stated on a document described in subsection (2) or (3), a document described in subsection (2) or (3) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

History: En. 91A-1-107 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-107; amd. Sec. 2, Ch. 582, L. 1989; amd. Sec. 4, Ch. 494, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in introductory clause, at beginning after "In", substituted "addition to" for "proceedings under this code" and after "jurisdiction" substituted "the following rules relating to a determination of death or status apply" for "including any relating to simultaneous deaths, are applicable unless specifically displaced by the code"; substituted (1) concerning when death occurs for former text that read: "In addition, the following rules relating to determination of death and status are applicable"; in (3) and (5) substituted "individual" for "person"; in (4) substituted "subsection (2) or (3)" for "subsection (2)(a) or (2)(b)"; in (5) substituted "subsections (2) through (4)" for "subsections (2)(a) through (2)(c)"; inserted (6) concerning establishment of time of death by statement in a document; and made minor changes in style.

Cross-References

Montana Rules of Evidence, Title 26, ch. 10.

72-1-109. Acts by holder of general power. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, including relief from liability or penalty for failure to post bond, or to perform other duties, the sole holder or all coholders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

History: En. 91A-1-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-108.

72-1-110. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-6-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-6-101.

72-1-111. Remedies for fraud — statute of limitations. (1) Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief including restitution against the perpetrator of the fraud or any person benefiting from the fraud, whether innocent or not (other than a bona fide purchaser for value and without notice).

(2) Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 5 years after the time of commission of the fraud.

(3) This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

History: En. 91A-1-106 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-106.

Cross-References

Kinds of fraud, 28-2-404 through 28-2-406.

Part 2

Scope, Jurisdiction, and Courts

72-1-201. Territorial application. Except as otherwise provided in this code, this code applies to:

(1) the affairs and estates of decedents, missing persons, and persons to be protected in this state;

(2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state; and

(3) incapacitated persons and minors in this state.

History: En. 91A-1-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-301.

72-1-202. Subject matter jurisdiction. (1) To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to:

(a) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and

(b) protection of minors and incapacitated persons.

(2) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

History: En. 91A-1-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-302.

72-1-203. Venue — multiple proceedings — transfer. (1) Where venue for a proceeding under this code may lie in more than one county in the state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(2) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue

is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(3) If a court finds that, as a matter of law or in the interest of justice, a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

History: **En. 91A-1-303 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-303.**

Cross-References

Trial venue, Title 25, ch. 2.

72-1-204. Records and certified copies. (1) The clerk of court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the clerk or court and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information.

(2) Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded.

(3) Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

History: **En. 91A-1-305 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-305.**

Cross-References

Probate records, 3-5-513.

72-1-205. Powers of clerk — performable by clerk or court. The acts and orders which this code specifies as performable by the clerk of court may be performed either by a judge of the court or by the clerk of court.

History: **En. 91A-1-307 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-307.**

72-1-206. Oath or affirmation on filed documents. Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code, including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed; deliberate falsification therein shall constitute the offense of false swearing.

History: **En. 91A-1-309 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-309.**

Cross-References

False swearing, 45-7-202.

72-1-207. Rules of civil procedure to apply. Unless specifically provided to the contrary in this code or unless inconsistent with its provisions, the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern formal proceedings under this code.

History: **En. 91A-1-304 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-304.**

Cross-References

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

72-1-208. Jury trial. (1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding, a formal proceeding for determination of heirship, and any other proceeding as may be provided for by law.

(2) If there is no right to trial by jury under subsection (1) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

History: En. 91A-1-306 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-306.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

72-1-209. Appeals. Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments, and power of the appellate court, is governed by the statutes and rules applicable to the appeals to the supreme court.

History: En. 91A-1-308 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-308.

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Part 3

Notices, Parties, and Representation Generally

72-1-301. Notice — method and time of giving. (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(a) by mailing a copy thereof at least 14 days before the time set for the hearing by certified, registered, or ordinary first-class mail addressed to the person being notified at the post-office address given in his demand for notice, if any, or at his office or place of residence, if known;

(b) by delivering a copy thereof to the person being notified personally at least 14 days before the time set for the hearing; or

(c) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing in a weekly paper once a week for 3 consecutive weeks and, if in a newspaper published more often than once a week, by publishing on at least 3 different days of publication, and it shall be so published that there must be at least 10 days from the first to the last day of publication, both the first and last day being included.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

History: En. 91A-1-401 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 516, L. 1975; R.C.M. 1947, 91A-1-401.

72-1-302. Waiver of notice. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

History: **En. 91A-1-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-402.**

72-1-303. Pleadings — when orders or notice binding one binds another — representation. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons and in judicially supervised settlements, the following apply:

(1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(b) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by 72-1-301 shall be given to every interested person or to one who can bind an interested person as described in (2)(a) or (2)(b) above. Notice may be given both to a person and to another who may bind him.

(b) Notice is given to unborn or unascertained persons, who are not represented under (2)(a) or (2)(b) above, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

History: **En. 91A-1-403 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-403.**

CHAPTER 2

UPC — INTESTACY, WILLS, AND DONATIVE TRANSFERS

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72-2-101 through 72-2-105. Renumbered by Code Commissioner, 1993.
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72-2-112. Share of spouse.
72-2-113. Share of heirs other than surviving spouse.
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72-2-115. No taker.
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72-2-119. Advancements.
72-2-120. Debts to decedent.
72-2-121. Alienage.
72-2-122. Dower and curtesy abolished.
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72-2-124. Parent and child relationship.

Part 2 — Elective Share of Surviving Spouse

72-2-201 through 72-2-207. Renumbered by Code Commissioner, 1993.
72-2-208 and 72-2-209 reserved.
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72-2-215. Reporting duty of personal representative in estate involving alien heir.
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72-2-221. Elective share.
72-2-222. Augmented estate.
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72-2-224. Waiver of right to elect and of other rights.
72-2-225. Proceeding for elective share — time limit.
72-2-226. Effect of election on statutory benefits.
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Part 3 — Spouse and Children Unprovided for in Wills

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72-2-302. Renumbered 72-2-522 by Code Commissioner, 1993.
72-2-303. Repealed.
72-2-304. Renumbered 72-2-524 by Code Commissioner, 1993.
72-2-305. Renumbered 72-2-525 by Code Commissioner, 1993.
72-2-306. Renumbered 72-2-526 by Code Commissioner, 1993.
72-2-307 through 72-2-310 reserved.
72-2-311 through 72-2-314. Renumbered by Code Commissioner, 1993.
72-2-315 through 72-2-320 reserved.
72-2-321. Renumbered 72-2-527 by Code Commissioner, 1993.
72-2-322. Renumbered 72-2-528 by Code Commissioner, 1993.
72-2-323. Renumbered 72-2-529 by Code Commissioner, 1993.
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72-2-331. Entitlement of spouse — premarital will.
72-2-332. Omitted children.

Part 4 — Exempt Property and Allowances

72-2-401. Renumbered 72-2-536 by Code Commissioner, 1993.
72-2-402. Renumbered 72-2-535 by Code Commissioner, 1993.
72-2-403 through 72-2-410 reserved.

72-2-411. Applicable law.
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72-2-413. Exempt property.
72-2-414. Family allowance.
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Part 5 — Wills, Will Contracts, and Custody and Deposit of Wills

72-2-501. Repealed.
72-2-502. Renumbered 72-2-612 by Code Commissioner, 1993.
72-2-503. Repealed.
72-2-504. Renumbered 72-2-713 by Code Commissioner, 1993.
72-2-505 through 72-2-510 reserved.
72-2-511. Repealed.
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72-2-520 reserved.
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72-2-522. Execution — witnessed wills — holographic wills.
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72-2-524. Self-proved will.
72-2-525. Who may witness.
72-2-526. Choice of law as to execution.
72-2-527. Revocation by writing or act.
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72-2-529. Revival of revoked will.
72-2-530. Incorporation by reference.
72-2-531. Testamentary additions to trusts.
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72-2-536. Duty of custodian of will — liability.
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72-2-602. Renumbered 72-2-332 by Code Commissioner, 1993.
72-2-603 through 72-2-610 reserved.
72-2-611. Scope.
72-2-612. Will may pass all property and after-acquired property.
72-2-613. Antilapse — deceased devisee — class gifts.
72-2-614. Failure of testamentary provision.
72-2-615. Increase in securities — accessions.
72-2-616. Nonademption of specific devises — unpaid proceeds of sale, condemnation, or insurance — sale by conservator or agent.
72-2-617. Nonexoneration.
72-2-618. Exercise of power of appointment.
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Part 7 — Rules of Construction Applicable to Wills and Other Governing Instruments

72-2-701 through 72-2-707. Renumbered by Code Commissioner, 1993.
72-2-708 through 72-2-710 reserved.
72-2-711. Scope.
72-2-712. Requirement of survival by one hundred twenty hours.
72-2-713. Choice of law as to meaning and effect of governing instrument.
72-2-714. Power of appointment — meaning of specific reference requirement.
72-2-715. Class gifts construed to accord with intestate succession.
72-2-716. Life insurance — retirement plan — account with POD designation — transfer-on-death registration — deceased beneficiary.
72-2-717. Survivorship with respect to future interests under terms of trust — substitute takers.

72-2-718. Class gifts to "descendants", "issue", or "heirs of the body" — form of distribution if none specified.
72-2-719. Representation — per capita at each generation — per stirpes.
72-2-720. Worthier title doctrine abolished.
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72-2-814. Revocation of probate and nonprobate transfers by divorce — no revocation by other changes of circumstances.

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72-2-902. Validity.
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72-2-906. Effect of certificate.
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72-2-1001. Short title.
72-2-1002. Statutory rule against perpetuities.
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72-2-1004. Reformation.
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72-2-1006. Prospective application.
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Chapter Cross-References

Living Will Act — discontinuance of life-sustaining supports, Title 50, ch. 9.

Uniform Anatomical Gift Act, Title 72, ch. 17.

Part 1
Intestate Succession

Part Cross-References

Treason and descent of estates, Art. II, sec. 30, Mont. Const.

72-2-101 through 72-2-105. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-101. Renumbered 72-2-811.
72-2-102. Renumbered 72-2-224.
72-2-103. Renumbered 72-2-812.
72-2-104. Renumbered 72-2-813.

72-2-105. Renumbered 72-2-534.

72-2-106 through 72-2-110 reserved.

72-2-111. Intestate estate. (1) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in chapters 1 through 5, except as modified by the decedent's will.

(2) A decedent may by will expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed an intestate share.

History: En. 91A-2-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-101; amd. Sec. 10, Ch. 494, L. 1993; Sec. 72-2-201, MCA 1991; redes. 72-2-111 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in (1), after "passes", inserted "by intestate succession" and at end substituted "chapters 1 through 5, except as modified by the decedent's will" for "the following sections of this code"; inserted (2) concerning an express exclusion or limitation by will; and made minor changes in style.

72-2-112. Share of spouse. The intestate share of a decedent's surviving spouse is:

(1) the entire intestate estate if:

(a) no descendant or parent of the decedent survives the decedent; or

(b) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(2) the first $200,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent but a parent of the decedent survives the decedent;

(3) the first $150,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(4) the first $100,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

History: En. 91A-2-102 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 363, L. 1975; R.C.M. 1947, 91A-2-102; amd. Sec. 4, Ch. 582, L. 1989; amd. Sec. 11, Ch. 494, L. 1993; Sec. 72-2-202, MCA 1991; redes. 72-2-112 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning the intestate share of a decedent's surviving spouse for former text that read: "The intestate share of the surviving spouse is:

(1) if there is no surviving issue or if there are surviving issue all of whom are issue of the surviving spouse also, the entire remaining estate;

(2) if there are surviving issue one or more of whom are not issue of the surviving spouse, as follows:

(a) if there is surviving only one child or the issue of one child, one-half of the intestate estate;

(b) if there are surviving two or more children, the issue of two or more deceased children, or one or more children and the issue of one or more deceased children, one-third of the intestate estate."

Cross-References

Elective share, 72-2-221.

72-2-113. Share of heirs other than surviving spouse. Any part of the intestate estate not passing to the decedent's surviving spouse under 72-2-112, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

(1) to the decedent's descendants by representation;

(2) if there is no surviving descendant, to the decedent's parents equally if both survive or to the surviving parent;

(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(4) if there is no surviving descendant, parent, or descendant of a parent and the decedent is:

(a) survived by one or more grandparents or descendants of grandparents:

(i) one-half to:

(A) the decedent's paternal grandparents equally if both survive;

(B) the surviving paternal grandparent; or

(C) the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and

(ii) the other one-half to the decedent's maternal relatives in the same manner; or

(b) not survived by a grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate to the decedent's relatives on the other side in the same manner as the half;

(5) (a) if there is no surviving descendant, grandparent, or descendant of a grandparent, to the person of the closest degree of kinship with the decedent. Except as provided in subsection (5)(b), if more than one person is of that closest degree, those persons share equally.

(b) If more than one person is of the closest degree as provided in subsection (5)(a) but they claim through different ancestors, those who claim through the nearer ancestor shall receive to the exclusion of those claiming through a more remote ancestor.

History: En. 91A-2-103 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 363, L. 1975; R.C.M. 1947, 91A-2-103; amd. Sec. 2, Ch. 52, L. 1981; amd. Sec. 12, Ch. 494, L. 1993; Sec. 72-2-203, MCA 1991; redes. 72-2-113 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning the share of the intestate estate of heirs other than the surviving spouse for former text that read: "The part of the intestate estate not passing to the surviving spouse under 72-2-202, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent, they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there is no surviving issue, to his parent or parents equally;

(3) if there is no surviving issue or parent, to the brothers and sisters and the children or grandchildren of any deceased brother or sister, by representation;

(4) if there is no surviving issue, parent, brother, sister, or children or grandchildren of a deceased brother or sister, to the next of kin in equal degree, except that where there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearer ancestors must be preferred to those claiming through an ancestor more remote."

72-2-114. Requirement that heir survive decedent for one hundred twenty hours. An individual who fails to survive the decedent by 120 hours is considered to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is considered that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under 72-2-115.

History: En. 91A-2-104 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-104; amd. Sec. 14, Ch. 494, L. 1993; Sec. 72-2-205, MCA 1991; redes. 72-2-114 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 throughout section substituted "individual" for "person"; in second sentence substituted "If it is not established by clear and convincing evidence" for "If the time of death of the decedent or of the person who would otherwise be an heir or the times of death of both cannot be determined"; and made minor changes in style.

72-2-115. No taker. If there is no taker under the provisions of this chapter, the intestate estate passes to the state of Montana.

History: En. 91A-2-105 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-105; amd. Sec. 16, Ch. 494, L. 1993; Sec. 72-2-207, MCA 1991; redes. 72-2-115 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted "this chapter" for "72-2-202 and 72-2-203".

72-2-116. Representation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under 72-2-114.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-114.

(2) (a) If, under 72-2-113(1), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into decedent's descendants and the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) (a) If, under 72-2-113(3) or (4), a decedent's intestate estate or a part of the intestate estate passes by representation to the descendants of the

decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

History: En. 91A-2-106 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-106; amd. Sec. 13, Ch. 494, L. 1993; Sec. 72-2-204, MCA 1991; redes. 72-2-116 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning representation for former text that read: "If representation is called for by this code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner."

Cross-References

Intestate succession — degree of kinship, Title 72, ch. 11, part 1.

72-2-117. Kindred of half blood. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

History: En. 91A-2-107 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-107; Sec. 72-2-211, MCA 1991; redes. 72-2-117 by Code Commissioner, 1993.

72-2-118. Afterborn heirs. An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

History: En. 91A-2-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-108; amd. Sec. 18, Ch. 494, L. 1993; Sec. 72-2-212, MCA 1991; redes. 72-2-118 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning individual in gestation surviving for 120 hours for former text that read: "Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent."

Cross-References

Omitted children, 72-2-332.

72-2-119. Advancements. (1) If an individual dies intestate as to all or a portion of the individual's estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if:

(a) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or

(b) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(2) For purposes of subsection (1), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(3) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

History: En. 91A-2-110 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-110; amd. Sec. 15, Ch. 494, L. 1993; Sec. 72-2-206, MCA 1991; redes. 72-2-119 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in (1), at beginning, substituted "individual" for "person", after "all" inserted "or a portion of", near middle, before "heir", inserted "individual who, at the decedent's death, is an", and near end substituted "heir's intestate share" for "latter's share of the estate"; in (1)(a), before "acknowledged", inserted "the heir" and after "writing" substituted "that the gift is" for "by the heir to be"; inserted (1)(b) concerning written indication that gift is accounted for in division and distribution of intestate estate; in (3) substituted "division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing" for "intestate share to be received by the recipient's issue unless the declaration or acknowledgement"; and made minor changes in style.

72-2-120. Debts to decedent. A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

History: En. Sec. 21, Ch. 494, L. 1993.

72-2-121. Alienage. No individual is disqualified to take as an heir because the individual or an individual through whom the individual claims is or has been an alien.

History: En. 91A-2-111 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-111; amd. Sec. 20, Ch. 494, L. 1993; Sec. 72-2-214, MCA 1991; redes. 72-2-121 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in two places substituted "individual" for "person"; at end deleted "unless the country in which he resides does not allow reciprocity"; and made minor changes in style.

72-2-122. Dower and curtesy abolished. The estates of dower and curtesy are abolished.

History: En. 91A-2-112 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-112; Sec. 72-2-701, MCA 1991; redes. 72-2-122 by Code Commissioner, 1993.

72-2-123. Individuals related to decedent through two lines. An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

History: En. Sec. 4, Ch. 52, L. 1981; amd. Sec. 17, Ch. 494, L. 1993; Sec. 72-2-210, MCA 1991; redes. 72-2-123 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 at beginning substituted "An individual" for "A person"; and made minor changes in style.

72-2-124. Parent and child relationship. (1) Except as provided in subsections (2) and (3), for the purposes of intestate succession by, through, or from a person, an individual is the child of the child's natural parents, regardless of their marital status. The parent and child relationship may be established under Title 40, chapter 6, part 1.

(2) An adopted individual is the child of an adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on:

(a) the relationship between the child and either natural parent; or

(b) the right of the child or a descendant of the child to inherit from or through the other natural parent.

(3) Inheritance from or through a child by either natural parent or the parent's kindred is precluded unless that natural parent has openly treated the child as the parent's and has not refused to support the child.

History: En. 91A-2-109 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-109; amd. Sec. 3, Ch. 52, L. 1981; amd. Sec. 19, Ch. 494, L. 1993; Sec. 72-2-213, MCA 1991; redes. 72-2-124 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in (1), at beginning, inserted exception clause, after "succession" deleted "a relationship of parent and child must be established to determine succession", and after "person" inserted "an individual is the child of the child's natural parents, regardless of their marital status. The parent and child relationship may be established under Title 40, chapter 6, part 1"; in (2), near beginning, substituted "individual" for "person", after "adopting parent" inserted "or parents", and before "natural parent" inserted "either"; inserted (2)(a) concerning right to inherit from or through the other natural parent; deleted former (2) that read: "(2) In cases not covered by subsection (1), a person is the child of its parents regardless of the marital status of its parents, and the parent and child relationship may be established under the Uniform Parentage Act, Title 40, chapter 6, part 1"; inserted (3) limiting inheritance from or through a natural child; and made minor changes in style.

Cross-References

Adoption — effect of final decree, 40-8-125.

Part 2

Elective Share of Surviving Spouse

Part Cross-References

Uniform Disposition of Community Property Rights at Death Act, Title 72, ch. 9, part 1.

72-2-201 through 72-2-207. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-201. Renumbered 72-2-111.
72-2-202. Renumbered 72-2-112.
72-2-203. Renumbered 72-2-113.
72-2-204. Renumbered 72-2-116.
72-2-205. Renumbered 72-2-114.
72-2-206. Renumbered 72-2-119.
72-2-207. Renumbered 72-2-115.

72-2-208 and 72-2-209 reserved.

72-2-210 through 72-2-214. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-210. Renumbered 72-2-123.
72-2-211. Renumbered 72-2-117.
72-2-212. Renumbered 72-2-118.
72-2-213. Renumbered 72-2-124.
72-2-214. Renumbered 72-2-121.

72-2-215. Reporting duty of personal representative in estate involving alien heir. In any estate where money or property does not vest in any alien person because of the provisions of 72-2-121, it shall be the duty of the personal representative or special administrator, within 30 days of having completed and filed the inventory and statement of value, to furnish the attorney general with the following written information and file a copy in the probate proceedings:

(1) the names and addresses of the alien heirs, devisees, legatees, or beneficiaries in the estate;

(2) the share or proportionate share of each of the alien heirs;

(3) the stated value of the entire estate.

History: En. 91A-2-112 by Sec. 1, Ch. 370, L. 1977; R.C.M. 1947, 91A-2-111.1.

72-2-216 through 72-2-220 reserved.

72-2-221. Elective share. (1) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other:	The elective-share percentage is:
Less than 1 year	supplemental amount only
1 year but less than 2 years	3% of the augmented estate
2 years but less than 3 years	6% of the augmented estate
3 years but less than 4 years	9% of the augmented estate
4 years but less than 5 years	12% of the augmented estate
5 years but less than 6 years	15% of the augmented estate
6 years but less than 7 years	18% of the augmented estate
7 years but less than 8 years	21% of the augmented estate
8 years but less than 9 years	24% of the augmented estate
9 years but less than 10 years	27% of the augmented estate
10 years but less than 11 years	30% of the augmented estate
11 years but less than 12 years	34% of the augmented estate
12 years but less than 13 years	38% of the augmented estate
13 years but less than 14 years	42% of the augmented estate
14 years but less than 15 years	46% of the augmented estate
15 years or more	50% of the augmented estate

(2) If the sum of the amounts described in 72-2-222(2)(c) and (2)(d) and 72-2-227(1)(a) and (1)(c) and that part of the elective-share amount payable from the decedent's probate and reclaimable estates under 72-2-227(2) and (3) is less than $50,000, the surviving spouse is entitled to a supplemental elective-share amount equal to $50,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's reclaimable estate in the order of priority set forth in 72-2-227(2) and (3).

(3) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

History: En. 91A-2-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-201; amd. Sec. 50, Ch. 494, L. 1993; Sec. 72-2-702, MCA 1991; redes. 72-2-221 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning elective share based on duration of marriage for former text that read: "(1) If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of one-third of the augmented estate under the limitations and conditions hereinafter stated.

(2) If a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share in property in this state is governed by the law of the decedent's domicile at death."

Cross-References

Share of spouse, 72-2-112.
Augmented estate, 72-2-222.

72-2-222. Augmented estate. (1) (a) As used in this section, the following definitions apply:

(i) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim.

(ii) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is considered to have a beneficial interest in the property.

(iii) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent by an exercise of the power could have created an interest, present or future, in the decedent or the decedent's creditors.

(iv) "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(v) "Right to income" includes a right to payments under an annuity or similar contractual arrangement.

(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted value of any present or future interest then held by the surviving spouse and the commuted value of amounts payable to the surviving spouse after the decedent's death under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(b) As used in subsections (2)(b)(iii) and (2)(b)(iv), "transfer" includes an exercise or release of a power of appointment but does not include a lapse of a power of appointment.

(2) The augmented estate consists of the sum of:

(a) the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims;

(b) the value of the decedent's reclaimable estate, which is composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

(i) property, to the extent the passing of the principal thereof to or for the benefit of any person, other than the decedent's surviving spouse, was subject to a presently exercisable general power of appointment held by the decedent alone, if the decedent held that power immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, released that power or exercised that power in favor of any person other than the decedent or the decedent's estate, spouse, or surviving spouse;

(ii) property, to the extent of the decedent's unilaterally severable interest therein, held by the decedent and any other person, except the decedent's surviving spouse, with right of survivorship, if the decedent held that interest immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, transferred that interest to any person other than the decedent's surviving spouse;

(iii) proceeds of insurance, including accidental death benefits, on the life of the decedent payable to any person other than the decedent's surviving spouse, if the decedent owned the insurance policy and had the power to change the beneficiary of the insurance policy or if the insurance policy was subject to a presently exercisable general power of appointment held by the decedent alone immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, transferred that policy to any person other than the decedent's surviving spouse; and

(iv) property transferred by the decedent to any person other than a bona fide purchaser at any time during the decedent's marriage to the surviving spouse, to or for the benefit of any person other than the surviving spouse, if the transfer is of any of the following types:

(A) any transfer to the extent that the decedent retained at the time of or during the 2-year period preceding death the possession or enjoyment of or right to income from the property;

(B) any transfer to the extent that at the time of or during the 2-year period preceding the decedent's death, the income or principal was subject to a power, exercisable by the decedent alone or in conjunction with any other person or exercisable by a nonadverse party for the benefit of the decedent or the decedent's estate;

(C) any transfer of property to the extent the decedent's contribution to it, as a percentage of the whole, was made during the 2-year period preceding the decedent's death, by which the property is held at the time of or during the 2-year period preceding the decedent's death by the decedent and another, other than the decedent's surviving spouse, with right of survivorship; or

(D) any transfer made to a donee during the 2-year period preceding the decedent's death to the extent that the aggregate transfers to any one donee in either of the years exceed $10,000;

(c) the value of property to which the surviving spouse succeeds by reason of the decedent's death, other than by homestead allowance, exempt property, family allowance, testate succession, or intestate succession, including the proceeds of insurance, including accidental death benefits, on the life of the decedent and including benefits payable under a retirement plan in which the decedent was a participant, exclusive of the federal social security system; and

(d) the value of property owned by the surviving spouse at the decedent's death, reduced by enforceable claims against that property or that spouse, plus the value of amounts that would have been includable in the surviving spouse's reclaimable estate had the spouse predeceased the decedent. However, amounts that would have been includable in the surviving spouse's reclaimable estate under subsection (2)(b)(iii) are not valued as if the surviving spouse were deceased.

(3) Any transfer or exercise or release of a power of appointment is excluded from the decedent's reclaimable estate:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for the transfer, exercise, or release; or

(b) if irrevocably made with the written consent or joinder of the surviving spouse.

(4) Property is valued as of the decedent's death, but an irrevocable transfer of property during the 2-year period preceding the decedent's death that is included in the decedent's reclaimable estate under subsections (2)(b)(i), (2)(b)(ii), and (2)(b)(iv) is valued as of the time of the transfer. If the terms of more than one of the provisions of subsection (2)(b) apply, the property is included in the augmented estate under the provision that yields the highest value. For purposes of this subsection, an "irrevocable transfer of property" includes an irrevocable exercise or release of a power of appointment.

(5) (a) Although under this section a payment, item of property, or other benefit is included in the decedent's reclaimable estate, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

(b) The written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated beneficiary. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(c) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

(6) (a) A person who purchases property from a recipient for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this part to return the payment, item of property, or benefit nor liable under this part for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit included in the decedent's reclaimable estate is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit, as provided in 72-2-227.

(b) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's reclaimable estate, a person who, not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in 72-2-227, to the person who would have been entitled to it were that section or part of that section not preempted.

History: En. 91A-2-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-202; amd. Sec. 6, Ch. 52, L. 1981; amd. Sec. 53, Ch. 494, L. 1993; Sec. 72-2-705, MCA 1991; redes. 72-2-222 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning the augmented estate for former text that read: "The augmented estate means the estate, reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) the value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(a) any transfer under which the decedent retained at the time of his death the possession or enjoyment of or right to income from the property;

(b) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit;

(c) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(d) any transfer made to a donee within 2 years of death of the decedent to the extent that the aggregate transfers to any one donee in any of the years exceed $3,000;

(2) any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(3) the value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includable in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(a) property derived from the decedent includes but is not limited to any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit, or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors are deemed to have been paid by the decedent.

(b) property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(c) property owned by the surviving spouse as of the decedent's death or previously transferred by the surviving spouse is presumed to have been derived from the decedent, except to the extent that the surviving spouse establishes that it was derived from another source.

(4) For the purposes of this section, a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument is prima facie evidence that the transfer described therein was made to a bona fide purchaser."

Cross-References

Public retirement systems, Title 19.

Homestead exemption, Title 70, ch. 32.

Exempt property and allowances, Title 72, ch. 2, part 4.

72-2-223. Right of election personal to surviving spouse. (1) The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under 72-2-225(1). If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney.

(2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court shall set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's reclaimable estate under

72-2-227(2) and (3) and shall appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee shall administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

(a) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse qualifies on the basis of need.

(b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

(c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order:

(i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or

(ii) to that predeceased spouse's heirs under 72-2-721.

History: En. 91A-2-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-203; amd. Sec. 51, Ch. 494, L. 1993; Sec. 72-2-703, MCA 1991; redes. 72-2-223 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning election of surviving spouse for former text that read: "The right of election of the surviving spouse may be exercised only by him. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy."

72-2-224. Waiver of right to elect and of other rights. (1) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance or any of them may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.

(2) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(a) the surviving spouse did not execute the waiver voluntarily; or

(b) the waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) did not have or reasonably could not have had an adequate knowledge of the property or financial obligations of the decedent.

(3) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(4) Unless it provides to the contrary, a waiver of "all rights", or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to that spouse from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

History: En. 91A-2-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-204; amd. Sec. 6, Ch. 494, L. 1993; Sec. 72-2-102, MCA 1991; redes. 72-2-224 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 at end of (1) substituted "surviving spouse" for "party waiving after fair disclosure"; inserted (2) concerning when a waiver is not enforceable; inserted (3) concerning court decision of unconscionability; and made minor changes in style.

Cross-References

Homestead exemption, Title 70, ch. 32.

Family allowance, 72-2-414.

72-2-225. Proceeding for elective share — time limit. (1) Except as provided in subsection (2), the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of the decedent's death or within 6 months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection (2), the decedent's reclaimable estate, described in 72-2-222(2)(b), is not included within the augmented estate for the purpose of computing the elective share if the petition is filed more than 9 months after the decedent's death.

(2) Within 9 months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within 9 months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's reclaimable estate, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's reclaimable estate, described in 72-2-222(2)(b), is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(3) The surviving spouse may withdraw a demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under 72-2-227. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been under 72-2-227 if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

History: En. 91A-2-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-205; amd. Sec. 8, Ch. 52, L. 1981; amd. Sec. 55, Ch. 494, L. 1993; Sec. 72-2-707, MCA 1991; redes. 72-2-225 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted (1) concerning notice of time and place of election for former (1) that read: "The surviving spouse may elect to take his elective share in the augmented estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of death or within 6 months after the probate of the decedent's will, whichever limitation last expires. However, the nonprobate transfers described in 72-2-705(1) shall not be included within the augmented estate for the purpose of computing the elective share if the petition is filed later than 9 months after death. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired"; substituted (2) imposing 9-month limit on time for petition for former (2) that read: "The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share"; in (4), near beginning of first sentence, substituted "elective-share and supplemental elective-share amounts" for "amount of the elective share" and in last sentence inserted reference to 72-2-227; and made minor changes in style.

72-2-226. Effect of election on statutory benefits. If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

History: En. 91A-2-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-206; amd. Sec. 8, Ch. 582, L. 1989; amd. Sec. 52, Ch. 494, L. 1993; Sec. 72-2-704, MCA 1991; redes. 72-2-226 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning effect of election on statutory benefits for former text that read: "A surviving spouse is entitled to homestead allowance, exempt property, and family allowance whether or not he elects to take an elective share."

Cross-References

Homestead exemption, Title 70, ch. 32.

Exempt property and allowances, Title 72, ch. 2, part 4.

Disclaimer of property interests, 72-2-811.

Community property — disposition upon death, 72-9-107.

72-2-227. Charging spouse with owned assets and gifts received — liability of others for balance of elective share. (1) In the proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's reclaimable estate:

(a) amounts included in the augmented estate that pass or have passed to the surviving spouse by testate or intestate succession;

(b) amounts included in the augmented estate under 72-2-222(2)(c);

(c) amounts included in the augmented estate that would have passed to the spouse but were disclaimed; and

(d) amounts included in the augmented estate under 72-2-222(2)(d) up to the applicable percentage thereof. For purposes of this subsection (d), the "applicable percentage" is twice the elective-share percentage set forth in the schedule in 72-2-221(1) appropriate to the length of time the spouse and the decedent were married to each other.

(2) If, after the application of subsection (1), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and that portion of the decedent's reclaimable estate, other than amounts irrevocably transferred within 2 years before the decedent's death, are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's reclaimable estate are applied so that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

(3) If, after the application of subsections (1) and (2), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's reclaimable estate is applied so that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

(4) Only original recipients of the reclaimable estate described in 72-2-222(2)(b) and the donees of the recipients of the reclaimable estate to the extent the donees have the property or its proceeds are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to contribution may choose to give up the proportional part of the reclaimable estate or to pay the value of the amount for which the person is liable.

History: En. 91A-2-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-207; amd. Sec. 7, Ch. 52, L. 1981; amd. Sec. 54, Ch. 494, L. 1993; Sec. 72-2-706, MCA 1991; redes. 72-2-227 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning charging a spouse with owned assets and gifts received and charging others for the balance of the elective share for former text that read: "(1) In the proceeding for an elective share, values included in the augmented estate which pass or have passed to the surviving spouse, or which would have passed to the spouse but were renounced, are applied first to satisfy the elective share and to reduce any contributions due from other recipients of transfers included in the augmented estate. For purposes of this subsection, the electing spouse's beneficial interest in any life estate or in any trust shall be computed as if worth one-half of the total value of the property subject to the life estate, or of the trust estate, unless higher or lower values for these interests are established by proof.

(2) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

(3) Only original transferees from or appointees of the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate."

Part 3

Spouse and Children Unprovided for in Wills

72-2-301. Renumbered 72-2-521 by Code Commissioner, 1993.

72-2-302. Renumbered 72-2-522 by Code Commissioner, 1993.

72-2-303. Repealed. Sec. 134, Ch. 494, L. 1993.

History: **En. 91A-2-503 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-503.**

72-2-304. Renumbered 72-2-524 by Code Commissioner, 1993.

72-2-305. Renumbered 72-2-525 by Code Commissioner, 1993.

72-2-306. Renumbered 72-2-526 by Code Commissioner, 1993.

72-2-307 through 72-2-310 reserved.

72-2-311 through 72-2-314. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-311. Renumbered 72-2-530.
72-2-312. Renumbered 72-2-533.
72-2-313. Renumbered 72-2-532.
72-2-314. Renumbered 72-2-531.

72-2-315 through 72-2-320 reserved.

72-2-321. Renumbered 72-2-527 by Code Commissioner, 1993.

72-2-322. Renumbered 72-2-528 by Code Commissioner, 1993.

72-2-323. Renumbered 72-2-529 by Code Commissioner, 1993.

72-2-324 through 72-2-330 reserved.

72-2-331. Entitlement of spouse — premarital will. (1) If a testator's surviving spouse married the testator after the execution of the will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that is neither devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor devised or passes under 72-2-613 or 72-2-614 to a descendant of such a child, unless:

(a) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(b) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(c) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(2) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under 72-2-613 or 72-2-614 to a descendant of such a child, abate as provided in 72-3-901.

History: En. 91A-2-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-301; amd. Sec. 48, Ch. 494, L. 1993; Sec. 72-2-601, MCA 1991; redes. 72-2-331 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning the entitlement of a spouse who marries testator after the execution of a will for former text that read: "(1) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) In satisfying a share provided by this section, the devises made by the will abate as provided in 72-3-901."

72-2-332. Omitted children. (1) Except as provided in subsection (2), if a testator fails to provide in the testator's will for any of the testator's children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(a) If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had one or more children living when the testator executed the will and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subsection (1)(b)(i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this subsection (1)(b), devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Subsections (1)(a), (1)(b), and (3) do not apply if:

(a) it appears from the will that the omission was intentional; or

(b) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) Except as provided in subsection (2), if at the time of execution of the will the testator fails to provide in the testator's will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

(4) In satisfying a share provided by subsection (1)(a), devises made by the will abate as provided in 72-3-901.

History: En. 91A-2-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-302; amd. Sec. 49, Ch. 494, L. 1993; Sec. 72-2-602, MCA 1991; redes. 72-2-332 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning failure of testator to provide for certain of testator's children for former text that read: "(1) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(a) it appears from the will that the omission was intentional;

(b) when the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or

(c) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(3) In satisfying a share provided by this section, the devises made by the will abate as provided in 72-3-901."

Cross-References

Afterborn heirs, 72-2-118.

Part 4
Exempt Property and Allowances

Part Cross-References

Uniform Disposition of Community Property Rights at Death Act, Title 72, ch. 9, part 1.

72-2-401. Renumbered 72-2-536 by Code Commissioner, 1993.

72-2-402. Renumbered 72-2-535 by Code Commissioner, 1993.

72-2-403 through 72-2-410 reserved.

72-2-411. Applicable law. This part applies to the estate of a decedent who dies domiciled in this state. Rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

History: En. Sec. 56, Ch. 494, L. 1993.

72-2-412. Homestead allowance. A decedent's surviving spouse is entitled to a homestead allowance of $20,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to $20,000 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

History: En. 91A-2-401 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 153, L. 1977; R.C.M. 1947, 91A-2-401; amd. Sec. 57, Ch. 494, L. 1993; Sec. 72-2-801, MCA 1991; redes. 72-2-412 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 at beginning substituted "decedent's surviving spouse" for "surviving spouse of a decedent who was domiciled in this state".

Cross-References

Homestead allowance, Title 70, ch. 32.

72-2-413. Exempt property. In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding $10,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than $10,000 or if there is not $10,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will unless otherwise provided, by intestate succession, or by way of elective share.

History: En. 91A-2-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-402; amd. Sec. 58, Ch. 494, L. 1993; Sec. 72-2-802, MCA 1991; redes. 72-2-413 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 throughout section increased amount of exempt property to $10,000 from $3,500; in first sentence substituted "decedent's surviving spouse" for "surviving spouse of a decedent who was domiciled in this state"; and made minor changes in style.

72-2-414. Family allowance. (1) In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children, otherwise to the children or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or the child's guardian or other person having the child's care and custody and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except the homestead allowance.

(2) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates the right to allowances not yet paid.

History: En. 91A-2-403 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-403; amd. Sec. 59, Ch. 494, L. 1993; Sec. 72-2-803, MCA 1991; redes. 72-2-414 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in first sentence, after "exempt property", deleted "if the decedent was domiciled in this state"; and made minor changes in style.

Cross-References

Inheritance tax exemptions, 72-16-314.

72-2-415. Source, determination, and documentation. (1) If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding $18,000 or periodic installments not exceeding $1,500 per month for 1 year and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

(2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under 72-2-223(2).

History: En. 91A-2-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-404; amd. Sec. 60, Ch. 494, L. 1993; Sec. 72-2-804, MCA 1991; redes. 72-2-415 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in (1), in first sentence after "homestead", substituted "allowance or exempt property" for "and exempt property" and in fifth sentence increased lump-sum amount to $18,000 from $6,000 and increased periodic installment amount to $1,500 from $500; inserted (2) concerning surviving spouse who is incapacitated; and made minor changes in style.

Part 5

Wills, Will Contracts, and Custody and Deposit of Wills

72-2-501. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-2-603 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-603.

72-2-502. Renumbered 72-2-612 by Code Commissioner, 1993.

72-2-503. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-2-611 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-611.

72-2-504. Renumbered 72-2-713 by Code Commissioner, 1993.

72-2-505 through 72-2-510 reserved.

72-2-511. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-2-601 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-601.

72-2-512 through 72-2-519. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-512.	Renumbered 72-2-613.
72-2-513.	Renumbered 72-2-614.
72-2-514.	Renumbered 72-2-617.
72-2-515.	Renumbered 72-2-619.
72-2-516.	Renumbered 72-2-616.
72-2-517.	Renumbered 72-2-615.
72-2-518.	Renumbered 72-2-618.
72-2-519.	Renumbered 72-2-537.

72-2-520 reserved.

72-2-521. Who may make a will. An individual 18 or more years of age who is of sound mind may make a will.

History: En. 91A-2-501 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-501; amd. Sec. 22, Ch. 494, L. 1993; Sec. 72-2-301, MCA 1991; redes. 72-2-521 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 at beginning substituted "An individual" for "A person".

72-2-522. Execution — witnessed wills — holographic wills. (1) Except as provided in 72-2-523, 72-2-526, 72-2-533, and subsection (2) of this section, a will must be:

(a) in writing;

(b) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(c) signed by at least two individuals, each of whom signed within a reasonable time after having witnessed either the signing of the will as described in subsection (1)(b) or the testator's acknowledgment of that signature or acknowledgment of the will.

(2) A will that does not comply with subsection (1) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

(3) Intent that the document constitute the testator's will may be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

History: En. 91A-2-502 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-502; amd. Sec. 23, Ch. 494, L. 1993; Sec. 72-2-302, MCA 1991; redes. 72-2-522 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning execution of holographic and witnessed will for former text that read: "Except as provided for holographic wills, writings within 72-2-312, and wills within 72-2-306, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will."

Code Commissioner Correction: Chapter 494 inserted a reference to 72-2-303, which was repealed. The reference was intended to be to section 2-503 of the Uniform Probate Code. That section was enacted as 72-2-523. Pursuant to the authority contained in sec. 84, Ch. 10, L. 1993, the Code Commissioner has inserted the corresponding reference.

72-2-523. Writings intended as wills. Although a document or writing added upon a document was not executed in compliance with 72-2-522, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

(1) the decedent's will;

(2) a partial or complete revocation of the will;

(3) an addition to or an alteration of the will; or

(4) a partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the will.

History: En. Sec. 34, Ch. 494, L. 1993.

72-2-524. Self-proved will. (1) A will may be simultaneously executed, attested, and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, ..., the testator, sign my name to this instrument this ...... day of ......, 19...., and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

. . . .
Testator

We, ..., ..., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as the testator's will and that the testator signs it willingly (or willingly directs another to sign for the testator), that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

. . . .
Witness
. . . .
Witness

THE STATE OF . . . .
COUNTY OF . . . .

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by .... and ...., witnesses, this ...... day of ......

(SEAL) (Signed) . . . .
(Official capacity of officer)
. . . .

(2) An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

THE STATE OF . . . .
COUNTY OF . . . .

We, ..., ..., and ...., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that the testator signed willingly (or willingly directed another to sign for the testator), that the testator executed it as the testator's free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of the witness's knowledge the testator was at that time 18 years of age or older, of sound mind, and under no constraint or undue influence.

. . . . Testator
. . . . Witness
. . . . Witness

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by .... and ...., witnesses, this ...... day of ......, ...

(SEAL) (Signed) . . . .
(Official capacity of officer)
. . . .

(3) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution.

History: **En. 91A-2-504 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-504; amd. Sec. 5, Ch. 52, L. 1981; amd. Sec. 24, Ch. 494, L. 1993; Sec. 72-2-304, MCA 1991; redes. 72-2-524 by Code Commissioner, 1993.**

Compiler's Comments

1993 Amendment: Chapter 494 inserted (3) concerning signature affixed to self-proving will; and made minor changes in style.

Cross-References

What constitutes undue influence, 28-2-407.

72-2-525. Who may witness. (1) An individual generally competent to be a witness may act as a witness to a will.

(2) The signing of a will by an interested witness does not invalidate the will or any provision of it.

History: **En. 91A-2-505 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-505; amd. Sec. 1, Ch. 6, L. 1979; amd. Sec. 5, Ch. 582, L. 1989; amd. Sec. 25, Ch. 494, L. 1993; Sec. 72-2-305, MCA 1991; redes. 72-2-525 by Code Commissioner, 1993.**

Compiler's Comments

1993 Amendment: Chapter 494 in (1), at beginning, substituted "An individual" for "Any person"; and substituted (2) concerning signing by interested witness for former text that read: "A will is not invalid because the will is signed by an interested witness."

72-2-526. Choice of law as to execution. A written will is valid if executed in compliance with 72-2-522 or 72-2-523 or if its execution complies with the law at the time of execution of the place where the will is executed or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

History: **En. 91A-2-506 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-506; amd. Sec. 26, Ch. 494, L. 1993; Sec. 72-2-306, MCA 1991; redes. 72-2-526 by Code Commissioner, 1993.**

Compiler's Comments

1993 Amendment: Chapter 494 substituted reference to 72-2-523 for reference to 72-2-303.

72-2-527. Revocation by writing or act. (1) A will or any part of a will is revoked:

(a) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(b) by performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part of the will or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this subsection (b), "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touched any of the words on the will.

(2) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsis-

tency if the testator intended the subsequent will to replace rather than supplement the previous will.

(3) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked and only the subsequent will is operative on the testator's death.

(4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will and each will is fully operative on the testator's death to the extent they are not inconsistent.

History: En. 91A-2-507 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-507; amd. Sec. 31, Ch. 494, L. 1993; Sec. 72-2-321, MCA 1991; redes. 72-2-527 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning revocation of a will for former text that read: "A will or any part thereof is revoked:

(1) by a subsequent will which revokes the prior will or part expressly or by inconsistency; or

(2) by being burned, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction."

72-2-528. Revocation by change of circumstances. Except as provided in 72-2-813 and 72-2-814, a change of circumstances does not revoke a will or any part of it.

History: En. 91A-2-508 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-508; amd. Sec. 32, Ch. 494, L. 1993; Sec. 72-2-322, MCA 1991; redes. 72-2-528 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning revocation by change of circumstances for former text that read: "(1) If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise.

(2) Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent.

(3) If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse.

(4) For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of 72-2-103(2). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(5) No change of circumstances other than as described in this section revokes a will."

Cross-References

Declaration of invalidity of marriage, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

72-2-529. Revival of revoked will. (1) If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under 72-2-527(1)(b), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

(2) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under 72-2-527(1)(b), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(3) If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

History: En. 91A-2-509 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-509; amd. Sec. 33, Ch. 494, L. 1993; Sec. 72-2-323, MCA 1991; redes. 72-2-529 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning revival of revoked will for former text that read: "(1) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part is thereafter revoked by acts under 72-2-321, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(2) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect."

72-2-530. Incorporation by reference. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

History: En. 91A-2-510 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-510; amd. Sec. 27, Ch. 494, L. 1993; Sec. 72-2-311, MCA 1991; redes. 72-2-530 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 at beginning substituted "A" for "Any".

72-2-531. Testamentary additions to trusts. (1) (a) A will may validly devise property to the trustee of a trust established or to be established:

(i) during the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts; or

(ii) at the testator's death by the testator's devise to the trustee if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust.

(b) The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or the testator's death.

(2) Unless the testator's will provides otherwise, property devised to a trust described in subsection (1) is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(3) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

History: En. 91A-2-511 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-511; amd. Sec. 30, Ch. 494, L. 1993; Sec. 72-2-314, MCA 1991; redes. 72-2-531 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in (1)(a), at beginning, substituted "A will may validly devise property" for "A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will"; at beginning of (1)(a)(i) inserted "during the testator's lifetime" and near end substituted "settlor" for "trustor"; at beginning of (1)(a)(ii) inserted "at the testator's death by the testator's devise to the trustee", near middle after "concurrently with", inserted "or after", and after "testator's will or in" substituted "another individual's will if that other individual" for "the valid last will of a person who"; in (2), near beginning after "devised", inserted "to a trust described in subsection (1)", near middle, after "trust to which it is", substituted "devised" for "given", after "provisions of the" substituted "governing instrument" for "instrument or will", and at end deleted "(regardless of whether made before or after the execution of the testator's will) and if the testator's will so provides, including any amendments to the trust made after the death of the testator"; at beginning of (3) inserted "Unless the testator's will provides otherwise"; and made minor changes in style.

72-2-532. Events of independent significance. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

History: En. 91A-2-512 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-512; amd. Sec. 29, Ch. 494, L. 1993; Sec. 72-2-313, MCA 1991; redes. 72-2-532 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in first sentence, after "events", substituted "that" for "which".

72-2-533. Separate writing identifying disposition of tangible personal property. (1) Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money.

(2) To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty.

(3) The writing may be:

(a) referred to as one to be in existence at the time of the testator's death;

(b) prepared before or after the execution of the will;

(c) altered by the testator after its preparation; and

(d) a writing that has no significance apart from its effect upon the dispositions made by the will.

History: En. 91A-2-513 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-513; amd. Sec. 28, Ch. 494, L. 1993; Sec. 72-2-312, MCA 1991; redes. 72-2-533 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 at end of (1), after "money", deleted "evidences of indebtedness, documents of title, and securities and property used in trade or business"; in (2), near middle, substituted "signed by the testator" for "either be in the handwriting of the testator or be signed by him"; and made minor changes in style.

72-2-534. Contracts concerning succession. (1) A contract to make a will or devise or not to revoke a will or devise or to die intestate, if executed after July 1, 1975, may be established only by:

(a) provisions of a will stating material provisions of the contract;

(b) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(c) a writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

History: En. 91A-2-701 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-701; amd. Sec. 9, Ch. 494, L. 1993; Sec. 72-2-105, MCA 1991; redes. 72-2-534 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in (1), after "1975,", substituted "may" for "can".

Cross-References

Circumstances surrounding execution of contract, 1-4-102, 1-4-109.

General rules of interpretation of contracts, Title 28, ch. 3, part 2.

72-2-535. Deposit of will with court in testator's lifetime. A will may be deposited by the testator or the testator's agent with any court for safekeeping, under rules of the court. The will must be sealed and kept confidential. During the testator's lifetime, a deposited will may be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that person on request or the court may deliver the will to the appropriate court.

History: En. 91A-2-901 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-901; amd. Sec. 36, Ch. 494, L. 1993; Sec. 72-2-402, MCA 1991; redes. 72-2-535 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in second sentence, before "kept confidential", inserted "sealed and"; and made minor changes in style.

72-2-536. Duty of custodian of will — liability. After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and, if none is known, to an appropriate court. A person who willfully fails to deliver a will is liable to any person aggrieved for any damages that may be sustained by the failure. A person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

History: En. 91A-2-902 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-902; amd. Sec. 35, Ch. 494, L. 1993; Sec. 72-2-401, MCA 1991; redes. 72-2-536 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 near middle of second sentence, after "aggrieved for", substituted "any damages that" for "the damages which"; and made minor changes in style.

Cross-References

Power to punish for contempt, 3-1-403.
Contempts, Title 3, ch. 1, part 5.

72-2-537. Penalty clause for contest. A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

History: En. 91A-3-905 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-905; amd. Sec. 46, Ch. 494, L. 1993; Sec. 72-2-519, MCA 1991; redes. 72-2-537 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 near beginning, after "penalize", substituted "an" for "any".

Part 6

Rules of Construction Applicable Only to Wills

Part Cross-References

Uniform Disposition of Community Property Rights at Death Act, Title 72, ch. 9, part 1.

Wills — construction and operation, Title 72, ch. 11, part 3.

72-2-601. Renumbered 72-2-331 by Code Commissioner, 1993.

72-2-602. Renumbered 72-2-332 by Code Commissioner, 1993.

72-2-603 through 72-2-610 reserved.

72-2-611. Scope. In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

History: En. Sec. 47, Ch. 494, L. 1993.

72-2-612. Will may pass all property and after-acquired property. A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.

History: En. 91A-2-604 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-604; amd. Sec. 37, Ch. 494, L. 1993; Sec. 72-2-502, MCA 1991; redes. 72-2-612 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 near beginning, after "will", substituted "may provide for the passage of" for "is construed to pass"; near end, after "acquired", substituted "by the estate after the testator's death" for "after the execution of the will"; and made minor changes in style.

72-2-613. Antilapse — deceased devisee — class gifts. (1) As used in this section, the following definitions apply:

(a) "Alternative devise" means a devise that is expressly created by the will and that under the terms of the will may take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(c) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(d) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(iii) an appointee under a power of appointment exercised by the testator's will.

(e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment but not a child of the testator or donor.

(f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is considered to have predeceased the testator under 72-2-712.

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in subsection (2)(d), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the deceased devisee or devisee's surviving descendants. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes of this subsection (b), "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the individual survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(iii) "Younger-generation devise" means a devise that:

(A) is to a descendant of a devisee of the primary devise;

(B) is an alternative devise with respect to the primary devise;

(C) is a devise for which a substitute gift is created; and

(D) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

History: En. 91A-2-605 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-605; amd. Sec. 39, Ch. 494, L. 1993; Sec. 72-2-512, MCA 1991; redes. 72-2-613 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning antilapse, deceased devisee, and class gifts for former text that read: "(1) If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee, they take equally, but if of unequal degree then those of more remote degree take by representation.

(2) One who would have been a devisee under a class gift if he had survived the tes-

tator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will."

72-2-614. Failure of testamentary provision. (1) Except as provided in 72-2-613, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(2) Except as provided in 72-2-613, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

History: En. 91A-2-606 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-606; amd. Sec. 40, Ch. 494, L. 1993; Sec. 72-2-513, MCA 1991; redes. 72-2-614 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in (2), at end, substituted "the interest of each in the remaining part of the residue" for "their interests in the residue"; and made minor changes in style.

72-2-615. Increase in securities — accessions. (1) If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and if the securities are of any of the following types:

(a) securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options;

(b) securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization; or

(c) securities of the same organization acquired as a result of a plan of reinvestment.

(2) Distributions in cash before death with respect to a described security are not part of the devise.

History: En. 91A-2-607 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-607; amd. Sec. 7, Ch. 582, L. 1989; amd. Sec. 44, Ch. 494, L. 1993; Sec. 72-2-517, MCA 1991; redes. 72-2-615 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning increases in securities for former text that read: "(1) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(a) as much of the devised securities as is a part of the estate at time of the testator's death;

(b) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity, excluding any securities acquired by exercise of purchase options;

(c) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity; and

(d) any additional securities of the entity owned by the testator as a result of a plan of reinvestment.

(2) Distributions prior to death with respect to a specifically devised security not provided for in subsection (1) are not part of the specific devise."

Cross-References

Securities regulation, Title 30, ch. 10.

72-2-616. Nonademption of specific devises — unpaid proceeds of sale, condemnation, or insurance — sale by conservator or agent. (1) A specific devisee has the right to the specifically devised property in the testator's estate at death and:

(a) any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

(d) property owned by the testator at death and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for a specifically devised obligation;

(e) real or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real or tangible personal property; and

(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subsections (1)(a) through (1)(e).

(2) If specifically devised property is sold or mortgaged by a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal or if a condemnation award, insurance proceeds, or recovery for an injury to property is paid to a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(3) The right of the specific devisee under subsection (2) is reduced by any right the devisee has under subsection (1).

(4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by 1 year.

(5) For the purposes of the references in subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

(a) "incapacitated principal" means a principal who is an incapacitated person;

(b) no adjudication of incapacity before death is necessary; and

(c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

History: En. 91A-2-608 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-608; amd. Sec. 6, Ch. 582, L. 1989; amd. Sec. 43, Ch. 494, L. 1993; Sec. 72-2-516, MCA 1991; redes. 72-2-616 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in (1), after "property", inserted "in the testator's estate at death"; in (1)(c), after "insurance on", inserted "or other recovery for injury to"; in (1)(d), after "death", inserted "and acquired" and after "security" inserted "interest"; inserted (1)(e) concerning real or tangible personal property; inserted (1)(f) concerning indication of ademption of devise by testator or consistent with plan of distribution; in (2), in first sentence near beginning after "sold", inserted "or mortgaged", in two places substituted "incapacitated principal" for "principal who is under a disability", after "insurance proceeds" inserted "or recovery for an injury to property", after the second "incapacitated principal" deleted "as a result of condemnation, fire, or casualty", after "sale price" inserted "the amount of the unpaid loan", and at end inserted "or the recovery" and deleted second sentence that read: "This subsection does not apply if after the sale, condemnation, or casualty it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year"; in (3) substituted "subsection (2)" for "this subsection"; inserted (4) concerning nonapplicability if incapacity ceased and testator survived determination by 1 year; inserted (5) concerning agent acting within authority of a durable power of attorney; and made minor changes in style.

72-2-617. Nonexoneration. A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

History: En. 91A-2-609 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-609; amd. Sec. 41, Ch. 494, L. 1993; Sec. 72-2-514, MCA 1991; redes. 72-2-617 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 revised the catchline but did not make a change in the statute text.

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9.

Mortgages, pledges, and liens, Title 71.

72-2-618. Exercise of power of appointment. In the absence of a requirement that a power of appointment be exercised by a reference to the power or by an express or specific reference to the power, a general residuary clause in a will or a will making general disposition of all of the testator's property expresses an intention to exercise a power of appointment held by the testator only if:

(1) the power is a general power and the creating instrument does not contain a gift if the power is not exercised; or

(2) the testator's will manifests an intention to include the property subject to the power.

History: En. 91A-2-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-610; amd. Sec. 45, Ch. 494, L. 1993; Sec. 72-2-518, MCA 1991; redes. 72-2-618 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in introductory clause, at beginning, inserted "In the absence of a requirement that a power of appointment be exercised by a reference to the power or by an express or specific reference to the power", near end, after "property", substituted "expresses an intention to" for "does not", and at end substituted "only if" for "unless"; substituted (1) concerning general power for former text that read: "specific reference is made to the power or there is some other indication of"; at beginning of (2) inserted "the testator's will manifests an"; and made minor changes in style.

72-2-619. Ademption by satisfaction. (1) Property that a testator gave in the testator's lifetime to a person is treated as a satisfaction of a devise in whole or in part only if:

(a) the will provides for deduction of the gift;

(b) the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or

(c) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(2) For purposes of partial satisfaction, property given during the testator's lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

(3) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying 72-2-613 and 72-2-614, unless the testator's contemporaneous writing provides otherwise.

History: En. 91A-2-612 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-612; amd. Sec. 42, Ch. 494, L. 1993; Sec. 72-2-515, MCA 1991; redes. 72-2-619 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 inserted (3) concerning the devisee failing to survive testator; and made minor changes in style.

Part 7

Rules of Construction Applicable to Wills and Other Governing Instruments

72-2-701 through 72-2-707. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-701.	Renumbered 72-2-122.
72-2-702.	Renumbered 72-2-221.
72-2-703.	Renumbered 72-2-223.
72-2-704.	Renumbered 72-2-226.
72-2-705.	Renumbered 72-2-222.
72-2-706.	Renumbered 72-2-227.
72-2-707.	Renumbered 72-2-225.

72-2-708 through 72-2-710 reserved.

72-2-711. Scope. In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a governing instrument. The rules of construction in this part apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

History: En. Sec. 61, Ch. 494, L. 1993.

72-2-712. Requirement of survival by one hundred twenty hours. (1) For the purposes of chapters 1 through 5, except for purposes of Title 72, chapter 6, part 3, and except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is considered to have predeceased the event.

(2) Except as provided in subsection (4) and except for a security registered in beneficiary form (TOD) under Title 72, chapter 6, part 3, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is considered to have predeceased the event.

(3) (a) Except as provided in subsection (4), if:

(i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours; and

(ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

(b) For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(4) This section does not apply if:

(a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(b) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period;

(c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become invalid under 72-2-1002(1)(b), (2)(b), or (3)(b); or

(d) the application of this section to multiple governing instruments would result in an unintended failure or duplication of a disposition.

(5) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

(b) Written notice of a claimed lack of entitlement under subsection (5)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence.

The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(6) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

History: En. Sec. 62, Ch. 494, L. 1993.

72-2-713. Choice of law as to meaning and effect of governing instrument. The meaning and legal effect of a governing instrument is determined by the local law of the state selected by the transferor in the governing instrument unless the application of that law is contrary to the provisions relating to the elective share described in part 7, the provisions relating to exempt property and allowances described in part 8, or any other public policy of this state otherwise applicable to the disposition.

History: En. 91A-2-602 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-602; amd. Sec. 38, Ch. 494, L. 1993; Sec. 72-2-504, MCA 1991; redes. 72-2-713 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning meaning and effect of governing instrument for former text that read: "The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the public policy of this state otherwise applicable to the disposition."

72-2-714. Power of appointment — meaning of specific reference requirement. If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

History: En. Sec. 63, Ch. 494, L. 1993.

72-2-715. Class gifts construed to accord with intestate succession. (1) Adopted individuals and individuals born out of wedlock and their respective descendants if appropriate to the class are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.

(2) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not the natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse.

(3) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

History: En. Sec. 64, Ch. 494, L. 1993.

72-2-716. Life insurance — retirement plan — account with POD designation — transfer-on-death registration — deceased beneficiary. (1) As used in this section, the following definitions apply:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and that under the terms of the governing instrument may take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation and includes:

(i) a class member if the beneficiary designation is in the form of a class gift; and

(ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent.

(c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(d) "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

(e) "Stepchild" means a child of the decedent's surviving, deceased, or former spouse but not a child of the decedent.

(f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-712.

(2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in subsection (2)(d), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the deceased beneficiary or beneficiary's surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For purposes of this subsection (b), "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

(c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to an individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(iii) "Younger-generation beneficiary designation" means a beneficiary designation that:

(A) is to a descendant of a beneficiary of the primary beneficiary designation;

(B) is an alternative beneficiary designation with respect to the primary beneficiary designation;

(C) is a beneficiary designation for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

(4) (a) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

(b) The written notice of the claim must be mailed to the payor's main office or home by certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

(5) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

History: En. Sec. 65, Ch. 494, L. 1993.

72-2-717. Survivorship with respect to future interests under terms of trust — substitute takers. (1) As used in this section, the following definitions apply:

(a) "Alternative future interest" means an expressly created future interest that may take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

(d) "Distribution date" with respect to a future interest means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but may occur at a time during the course of a day.

(e) "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

(f) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust that directs the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust.

(g) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under 72-2-712.

(2) A future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the deceased beneficiary or beneficiary's surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For purposes of this subsection (2), "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

(c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

(iii) "Younger-generation future interest" means a future interest that:

(A) is to a descendant of a beneficiary of the primary future interest;

(B) is an alternative future interest with respect to the primary future interest;

(C) is a future interest for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

(4) If, after the application of subsections (2) and (3), there is no surviving taker, the property passes in the following order:

(a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(b) if no taker is produced by the application of subsection (4)(a), the property passes to the transferor's heirs under 72-2-721.

History: En. Sec. 66, Ch. 494, L. 1993.

72-2-718. Class gifts to "descendants", "issue", or "heirs of the body" — form of distribution if none specified. If a class gift in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment in such shares as they would receive under the applicable law of intestate succession if the designated ancestor had then died intestate owning the subject matter of the class gift.

History: En. Sec. 67, Ch. 494, L. 1993.

72-2-719. Representation — per capita at each generation — per stirpes. (1) As used in this section, the following definitions apply:

(a) "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is considered to have predeceased the distribution date under 72-2-712.

(b) "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day but may occur at a time during the course of a day.

(c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under 72-2-712.

(2) (a) If a governing instrument calls for property to be distributed "per capita at each generation", the property is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(3) (a) If an applicable statute or a governing instrument calls for property to be distributed "by representation" or "per stirpes", the property is divided into as many equal shares as there are:

(i) surviving children of the designated ancestor; and

(ii) deceased children who left surviving descendants.

(b) Each surviving child is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(4) For the purposes of subsections (2) and (3), an individual who is deceased and left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

History: En. Sec. 68, Ch. 494, L. 1993.

72-2-720. Worthier title doctrine abolished. The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives", or "family" or language of similar import does not create or presumptively create a reversionary interest in the transferor.

History: En. Sec. 69, Ch. 494, L. 1993.

72-2-721. Future interests in "heirs" and like. If an applicable statute or a governing instrument calls for a future distribution to or creates a future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family" or language of similar import, the property passes to those persons, including the state under 72-2-115, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile in effect at the time the disposition is to take effect in possession or enjoyment as if the designated individual died at that time. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

History: En. Sec. 70, Ch. 494, L. 1993.

Part 8

General Provisions Concerning Probate and Nonprobate Transfers

72-2-801 through 72-2-804. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-801. Renumbered 72-2-412.
72-2-802. Renumbered 72-2-413.
72-2-803. Renumbered 72-2-414.
72-2-804. Renumbered 72-2-415.

72-2-805 through 72-2-810 reserved.

72-2-811. Disclaimer of property interests. (1) (a) A person or the representative of a person to whom an interest in or with respect to property or an interest in the property devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section.

(b) The right to disclaim exists notwithstanding:

(i) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(ii) any restriction or limitation on the right to disclaim contained in the governing instrument.

(c) For purposes of this subsection (1), the "representative of a person" includes a personal representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained person, or a person whose identity or address is unknown; and an agent acting on behalf of the person within the authority of a power of attorney. The representative of a person may rely on a general family benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

(2) The following rules govern the time when a disclaimer must be filed or delivered:

(a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest. The disclaimer or a copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed.

(c) A surviving joint tenant may disclaim as a separate interest any property or interest in property devolving to the joint tenant by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest in the property that is the subject of a joint tenancy devolving to the joint tenant if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy, and the survivor has not accepted a benefit under it.

(d) If real property or an interest in the property is disclaimed, a copy of the disclaimer may be recorded in the office of the clerk and recorder of the county in which the property or interest disclaimed is located.

(3) The disclaimer must:

(a) describe the property or interest disclaimed;

(b) declare the disclaimer and extent of the disclaimer; and

(c) be signed by the disclaimant.

(4) The following are the effects of a disclaimer:

(a) If property or an interest in property devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would take the disclaimant's share by representation were the disclaimant to predecease the decedent, the disclaimed interest passes by representation to the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of the death of the decedent.

(b) If property or an interest in property devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would take the disclaimant's share by representation were the disclaimant to predecease the effective date of the instrument, the disclaimed interest passes by representation to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and on all persons claiming through or under either of them.

(5) The right to disclaim property or an interest in the property is barred by:

(a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest or a contract therefor;

(b) a written waiver of the right to disclaim;

(c) an acceptance of the property or interest or benefit under it; or

(d) a sale of the property or interest under judicial sale made before the disclaimer is made.

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest in property under any other statute.

(7) An interest in property that exists on October 1, 1993, as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after October 1, 1993.

History: En. 91A-2-801 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-801; amd. Sec. 1, Ch. 52, L. 1981; amd. Sec. 1, Ch. 511, L. 1983; amd. Sec. 5, Ch. 494, L. 1993; Sec. 72-2-101, MCA 1991; redes. 72-2-811 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning disclaimer of property interests for former text that read: "(1) A person or his personal representative or the representative of an incapacitated or protected person who is an heir, devisee, person succeeding to a renounced interest, donee, appointee, grantee, recipient, or beneficiary under a trust or other nontestamentary instrument or under a power of appointment exercised by a testamentary or nontestamentary instrument, surviving joint owner or surviving joint tenant, or beneficiary or owner of an insurance contract or any incident of ownership therein may renounce, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written renunciation under this section. The instrument shall:

(a) describe the property or interest renounced;

(b) be signed by the person renouncing; and

(c) declare the renunciation and the extent thereof.

(2) The court may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce, modify, amend, or otherwise deviate from any restriction on or power of administration, management, or allocation of benefit upon finding that such restriction on the exercise of the power may defeat or impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. Such authority shall be exercised, after hearing and upon notice to all known persons beneficially interested in such trust, in the manner directed by the court.

(3) The instrument of renunciation must be received by the transferor of the interest, his legal representative, the personal representative of a deceased transferor, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates. To be effective for purposes of determining inheritance and estate taxes, the instrument must be received not later than the date which is 9 months after the later of the date on which the transfer creating the interest in a person is made or the date on which the person attains 18 years of age. If the circumstances that establish the right of a person to renounce an interest arise as a result of the death of an individual, the instrument must also be filed in the court of the county where proceedings concerning the decedent's estate are pending or where they would be pending if commenced. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the county clerk and recorder of the county in which the real estate is situated. No person entitled to a copy of the instrument is liable for any proper distribution or disposition made without actual notice of the renunciation, and no person making a proper distribution or disposition in reliance upon the renunciation is liable for any such distribution or disposition in the absence of actual notice that an action has been instituted contesting the validity of the renunciation.

(4) Unless the transferor of the interest has otherwise provided, the property or interest renounced devolves as though the person renouncing had predeceased the decedent or, if the appointment was exercised by a testamentary instrument, as though the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as though the person renouncing had predeceased the decedent or the donee of the power. A renunciation relates back for all pur-

poses to the date of the death of the decedent or the donee of the power.

(5) (a) The right to renounce property or an interest therein is barred by:

(i) an assignment, conveyance, encumbrance, pledge, or transfer of property or interest, or a contract therefor;

(ii) a written waiver of the right to renounce;

(iii) an acceptance of the property or interest or benefit thereunder; or

(iv) a sale of the property or interest under judicial sale made before the renunciation is effected.

(b) The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(c) A renunciation or a written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.

(7) Within 30 days of receipt of a written instrument of renunciation by the transferor of the interest, the renouncer, his legal representative, the personal representative of the decedent, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates, as the case may be, shall attempt to notify in writing those persons who are known or ascertainable with reasonable diligence who are recipients or potential recipients of the renounced interest of the renunciation and the interest or potential interest such recipient will receive as a result of the renunciation.

(8) Any interest in property which exists on July 1, 1983, may be renounced after October 1, 1983, as provided in this section. An interest that has arisen prior to July 1, 1983, in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section."

72-2-812. Effect of divorce, annulment, or decree of separation. (1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent marriage the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of chapter 2, parts 1 through 4, and of 72-3-501 through 72-3-508, a surviving spouse does not include:

(a) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;

(b) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or

(c) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

History: **En. 91A-2-802 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-802; amd. Sec. 7, Ch. 494, L. 1993; Sec. 72-2-103, MCA 1991; redes. 72-2-812 by Code Commissioner, 1993.**

Compiler's Comments

1993 Amendment: Chapter 494 throughout section substituted "individual" for "person"; and made minor changes in style.

Cross-References

Declaration of invalidity of marriage, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

72-2-813. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) For purposes of this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

(2) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

(3) The felonious and intentional killing of the decedent:

(a) revokes any revocable:

(i) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(b) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship and transforms the interests of the decedent and killer into tenancies in common.

(4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(5) Provisions of a governing instrument that are not revoked by this section are given effect as if the killer disclaimed all revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(6) A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction,

the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(8) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(b) Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(9) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(10) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103.

History: En. 91A-2-803 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-803; amd. Sec. 3, Ch. 582, L. 1989; amd. Sec. 8, Ch. 494, L. 1993; Sec. 72-2-104, MCA 1991; redes. 72-2-813 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designation for former text that read: "(1) A surviving spouse, heir, or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this chapter, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(6) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

(7) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."

Cross-References

Limitations on payment of retirement benefits if beneficiary causes member's death, 19-2-804.

Homicide, Title 45, ch. 5, part 1.

Constructive trust, 72-33-219.

72-2-814. Revocation of probate and nonprobate transfers by divorce — no revocation by other changes of circumstances. (1) As used in this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into tenancies in common.

(3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument that are not revoked by this section are given effect as if the former spouse and relatives of the former

spouse disclaimed the revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in 72-2-813 effects a revocation.

(7) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(b) Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

History: En. Sec. 71, Ch. 494, L. 1993.

Part 9

Uniform International Will Act

72-2-901. Definitions. In this part, the following definitions apply:

(1) "International will" means a will executed in conformity with 72-2-902 through 72-2-905.

(2) "Authorized person" and "person authorized to act in connection with international wills" means a person who by 72-2-908 or by the laws of the United States, including members of the diplomatic and consular service of the United States designated by the foreign service regulations, is empowered to supervise the execution of international wills.

History: En. Sec. 1, Ch. 62, L. 1991.

72-2-902. Validity. (1) The form of a will is valid, regardless of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this part.

(2) The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

(3) This part does not apply to the form of testamentary dispositions made by two or more persons in one instrument.

History: En. Sec. 2, Ch. 62, L. 1991.

72-2-903. Requirements. (1) An international will must be made in writing. It need not be written by the testator himself. It may be written in any language, by hand, or by any other means.

(2) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents of the will. The testator need not inform the witnesses or the authorized person of the contents of the will.

(3) In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

(4) If the testator is unable to sign, the absence of his signature does not affect the validity of the international will if the testator indicates the reason for his inability to sign and the authorized person makes note of the inability on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for him if the authorized person makes

note of this on the will, but it is not required that any person sign the testator's name for him.

(5) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

History: En. Sec. 3, Ch. 62, L. 1991.

72-2-904. Other points of form. (1) The signatures must be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.

(2) The date of the will must be the date of its signature by the authorized person.

(3) The authorized person shall ask the testator whether he wished to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator, the place where he intends to have his will kept must be mentioned in the certificate provided for in 72-2-905.

(4) A will executed in compliance with 72-2-903 is not invalid merely because it does not comply with this section.

History: En. Sec. 4, Ch. 62, L. 1991.

72-2-905. Certificate. The authorized person shall attach to the will a certificate to be signed by him establishing that the requirements of this part for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate must be substantially in the following form:

CERTIFICATE
(Convention of October 26, 1973)

I, ______________ (name, address, and capacity), a person authorized to act in connection with international wills, certify that on _________ (date) at _____________ (place) (testator) _________________ (name, address, date, and place of birth) in my presence and that of the witnesses

(a) ______________ (name, address, date, and place of birth)

(b) ______________ (name, address, date, and place of birth) has declared that the attached document is his will and that he knows the contents thereof.

I furthermore certify that:

(a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed;

(2) following a declaration of the testator stating that he was unable to sign his will for the following reason _________________, I have mentioned this declaration on the will, and the signature has been affixed by _______________ (name and address);

(b) the witnesses and I have signed the will;

(c) each page of the will has been signed by _____________ and numbered;

(d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

(e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

*(f) the testator has requested me to include the following statement concerning the safekeeping of his will:

PLACE OF EXECUTION
DATE
SIGNATURE and, if necessary, SEAL

* to be completed if appropriate

History: En. Sec. 5, Ch. 62, L. 1991.

72-2-906. Effect of certificate. In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under this part. The absence or irregularity of a certificate does not affect the formal validity of a will under this part.

History: En. Sec. 6, Ch. 62, L. 1991.

72-2-907. Revocation. An international will is subject to the ordinary rules of revocation of wills.

History: En. Sec. 7, Ch. 62, L. 1991.

72-2-908. Persons authorized to act in relation to international will — eligibility — recognition by authorizing agency. Individuals who have been admitted to practice law before the courts of this state and are currently licensed are authorized persons in relation to international wills.

History: En. Sec. 9, Ch. 62, L. 1991.

72-2-909. International will information registration. The secretary of state shall establish a registry system by which authorized persons may register in a central information center information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or individual-identifying number established by law, address, and date and place of birth of the testator and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The secretary of state, at the request of the authorized person, may cause the information he receives about the execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator if that other registry system adheres to rules protecting the confidentiality of the information similar to those established in this state.

History: En. Sec. 10, Ch. 62, L. 1991.

72-2-910. Source and construction. Sections 72-2-901 through 72-2-907 derive from the Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this part, regard must be given to its international origin and to the need for uniformity in its interpretation.

History: En. Sec. 8, Ch. 62, L. 1991.

Part 10

Uniform Statutory Rule Against Perpetuities — Honorary Trusts

72-2-1001. Short title. This part may be cited as the "Uniform Statutory Rule Against Perpetuities".

History: En. Sec. 1, Ch. 250, L. 1989; Sec. 70-1-801, MCA 1991; redes. 72-2-1001 by Code Commissioner, 1993.

72-2-1002. Statutory rule against perpetuities. (1) A nonvested property interest is invalid unless:

(a) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(b) the interest either vests or terminates within 90 years after its creation.

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(b) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(b) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement, a clause in a governing instrument purports to postpone the vesting or termination of any interest or trust until, purports to disallow the vesting or termination of any interest or trust beyond, purports to require all interests or trusts to vest or terminate no later than, or operates in any similar fashion upon the later of:

(a) the expiration of a period of time that exceeds 21 years or that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement; or

(b) the death of, or the expiration of a period not exceeding 21 years after the death of, the survivor of specified lives in being at the creation of the trust or other property arrangement, then the portion of the clause pertaining to the period of time that exceeds 21 years or that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement must be disregarded, and the clause operates upon the death of, or upon the expiration of the period not exceeding

21 years after the death of, the survivor of the specified lives in being at the creation of the trust or other property arrangement.

History: En. Sec. 2, Ch. 250, L. 1989; amd. Sec. 1, Ch. 26, L. 1991; Sec. 70-1-802, MCA 1991; redes. 72-2-1002 by Code Commissioner, 1993.

72-2-1003. When nonvested property interest or power of appointment created. (1) Except as provided in 72-2-1005 and subsections (2) and (3) of this section, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of this part, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in 72-2-1002(2) or (3), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of this part, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

History: En. Sec. 3, Ch. 250, L. 1989; Sec. 70-1-803, MCA 1991; redes. 72-2-1003 by Code Commissioner, 1993.

72-2-1004. Reformation. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the 90 years allowed by 72-2-1002(1)(b), (2)(b), or (3)(b) if:

(1) a nonvested property interest or a power of appointment becomes invalid under 72-2-1002;

(2) a class gift is not but might become invalid under 72-2-1002 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) a nonvested property interest that is not validated by 72-2-1002(1)(a) can vest but not within 90 years after its creation.

History: En. Sec. 4, Ch. 250, L. 1989; Sec. 70-1-804, MCA 1991; redes. 72-2-1004 by Code Commissioner, 1993.

72-2-1005. Exclusions from statutory rule against perpetuities. Section 72-2-1002 does not apply to:

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of a:

(a) premarital or postmarital agreement;

(b) separation or divorce settlement;

(c) spouse's election;

(d) similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(e) contract to make or not to revoke a will or trust;

(f) contract to exercise or not to exercise a power of appointment;

(g) transfer in satisfaction of a duty of support; or

(h) reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) the power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees or independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state.

History: En. Sec. 5, Ch. 250, L. 1989; Sec. 70-1-805, MCA 1991; redes. 72-2-1005 by Code Commissioner, 1993.

72-2-1006. Prospective application. (1) Except as extended by subsection (2), this part applies to a nonvested property interest or a power of appointment created on or after October 1, 1989. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before October 1, 1989, and is determined in a judicial proceeding commenced on or after October 1, 1989, to violate this state's rule against perpetuities as that rule existed before October 1, 1989, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

History: En. Sec. 6, Ch. 250, L. 1989; Sec. 70-1-806, MCA 1991; redes. 72-2-1006 by Code Commissioner, 1993.

72-2-1007. Uniformity of application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among the states enacting it.

History: En. Sec. 7, Ch. 250, L. 1989; Sec. 70-1-807, MCA 1991; redes. 72-2-1007 by Code Commissioner, 1993.

72-2-1008 through 72-2-1016 reserved.

72-2-1017. Honorary trusts — trusts for pets. (1) A trust for a noncharitable corporation or unincorporated society or for a lawful noncharitable purpose may be performed by the trustee for 21 years but no longer, whether or not there is a beneficiary who can seek the trust's enforcement or termination and whether or not the terms of the trust contemplate a longer duration.

(2) Subject to the provisions of this subsection, a trust for the care of a designated domestic or pet animal and the animal's offspring is valid. Except as expressly provided otherwise in the trust instrument, the following provisions apply:

(a) No portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of a covered animal.

(b) The trust terminates at the earlier of 21 years after the trust was created or when no living animal is covered by the trust.

(c) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) as directed in the trust instrument;

(ii) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and

(iii) if no taker is produced by the application of subsection (2)(c)(i) or (2)(c)(ii), to the transferor's heirs under 72-2-721.

(d) For the purposes of 72-2-717, the residuary clause is treated as creating a future interest under the terms of a trust.

(e) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual.

(f) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(g) A governing instrument must be liberally construed to bring the transfer within the applicability of this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(h) A court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (2)(c).

(i) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if required to ensure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

History: En. Sec. 72, Ch. 494, L. 1993.

CHAPTER 3

UPC — PROBATE AND ADMINISTRATION

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Part 1
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72-3-101. Devolution of estate at death — restrictions. (1) The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates.

(2) Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates or, in the absence of testamentary disposition, to his heirs or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property, and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

History: En. 91A-3-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-101.

72-3-102. Necessity of probate of will. Except as provided in 72-3-1101, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the clerk or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if:

(1) no court proceeding concerning the succession or administration of the estate has occurred; and

(2) either:

(a) the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will; or

(b) the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

History: **En. 91A-3-102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-102.**

72-3-103. Necessity of appointment for administration. Except as otherwise provided in chapter 4, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or clerk, qualify, and be issued letters. Administration of an estate is commenced by the issuance of letters.

History: **En. 91A-3-103 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-103.**

72-3-104. Claims against decedent — necessity of administration. (1) No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by 72-3-101 through 72-3-1103. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in 72-3-1012 or from a former personal representative individually liable as provided in 72-3-1014.

(2) This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

History: **En. 91A-3-104 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-104.**

72-3-105. Interested persons' rights of application and petition. Persons interested in decedent's estate may apply to the clerk for determination in the informal proceedings provided in chapter 3, part 2, and may petition the court for orders in formal proceedings within the court's jurisdiction, including but not limited to those described in chapter 3, parts 3 and 4.

History: **En. 91A-3-105 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-105(part).**

72-3-106. Interested person's right to demand notice of order or filing. (1) Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest may file a demand for notice with the court at any time after the death of the decedent stating:

(a) the name of the decedent;

(b) the nature of his interest in the estate; and

(c) the demandant's address or that of his attorney.

(2) The clerk shall mail a copy of the demand to the personal representative if one has been appointed.

(3) After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in 72-1-301 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person

making the filing may be liable for any damage caused by the absence of notice.

(4) The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

History: En. 91A-3-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-204.

72-3-107 through 72-3-110 reserved.

72-3-111. Exclusive jurisdiction of court — binding nature of orders after notice. (1) The district court has exclusive jurisdiction of all probate matters.

(2) In proceedings within the exclusive jurisdiction of the court where notice is required by this code or by rule, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with 72-1-301. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

History: En. 91A-3-105, 91A-3-106 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-105(part), 91A-3-106.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Trusts — subject matter jurisdiction, 72-35-101.

72-3-112. Venue for estate proceedings. (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(a) in the county where the decedent had his domicile at the time of his death; or

(b) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred unless the initial proceeding has been transferred as provided in 72-1-203 or subsection (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

History: En. 91A-3-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-201(1) thru (3).

Cross-References

Venue, Title 25, ch. 2.

72-3-113. Rules for determining location of property. (1) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office.

(2) Commercial paper, investment paper, and other instruments are located where the instrument is.

(3) An interest in property held in trust is located where the trustee may be sued.

History: **En. 91A-3-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-201(4).**

Cross-References

Uniform Commercial Code — commercial paper, Title 30, ch. 3.

Securities regulation, Title 30, ch. 10.

72-3-114. Conflicting claim as to domicile in another state. If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.

History: **En. 91A-3-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-202.**

72-3-115 through 72-3-120 reserved.

72-3-121. Scope of proceedings when no supervised administration — proceedings independent — combination of proceedings. Unless supervised administration as described in chapter 3, part 4, is involved:

(1) each proceeding before the court or clerk is independent of any other proceeding involving the same estate;

(2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this code, no petition is defective because it fails to embrace all matters which might then be the subject of a final order.

(3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and

(4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

History: **En. 91A-3-107 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-107.**

72-3-122. Time limit on probate, testacy, and appointment proceedings — exceptions. (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death; and

(d) if no proceeding concerning the succession or administration of the estate has occurred within 3 years after the decedent's death, a formal testacy proceeding may be commenced at any time thereafter for the sole purpose of establishing a devise of property which the devisee or his successors and assigns possessed in accordance with the will or property which was not possessed or claimed by anyone by virtue of the decedent's title during the 3-year period, and the order of the court must be limited to that property.

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(3) In cases under (1)(a) or (1)(b) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death.

History: En. 91A-3-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-108; amd. Sec. 9, Ch. 582, L. 1989.

72-3-123. Statutes of limitation on decedent's cause of action — applicability. No statute of limitation running on a cause of action belonging to a decedent, which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than 4 months after death. A cause of action which, but for this section, would have been barred less than 4 months after death is barred after 4 months unless tolled.

History: En. 91A-3-109 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-109.

Cross-References

Statutes of Limitations, Title 27, ch. 2.

Actions involving personal property accruing after death and before issuance of letters of administration, 27-2-304.

72-3-124 through 72-3-130 reserved.

72-3-131. Compromise of controversies. (1) A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probate will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto, including those unborn, unascertained, or who could not be located.

(2) An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

History: En. 91A-3-1101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1101.

72-3-132. Procedure for securing court approval of compromise. The procedure for securing court approval of a compromise is as follows:

(1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person

whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(3) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise.

(4) Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

History: En. 91A-3-1102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1102.

Part 2

Informal Probate and Appointment Proceedings

72-3-201. Applications to be verified. Applications for informal probate or informal appointment shall be directed to the clerk and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the information required by 72-3-202 through 72-3-205.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(part).

72-3-202. Required contents of application. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special, ancillary, or successor representative, shall contain the following:

(1) a statement of the interest of the applicant;

(2) the name and date of death of the decedent, his age, and the county and state of his domicile at the time of death and the names and addresses of the spouse, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(3) if the decedent was not domiciled in the state at the time of his death, a statement showing venue;

(4) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(5) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(1).

72-3-203. Probate and appointment under will — additional information required. (1) An application for informal probate of a will shall state the following in addition to the statements required by 72-3-202:

(a) that the original of the decedent's last will is in the possession of the court or accompanies the application or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(b) that the applicant to the best of his knowledge believes the will to have been validly executed;

(c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;

(d) that the time limit for informal probate as provided in this chapter has not expired either because 3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, that circumstances as described by 72-3-122 authorizing tardy probate have occurred.

(2) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought.

History: **En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(2), (3).**

72-3-204. Appointment in intestacy — additional information required. An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by 72-3-202:

(1) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under 72-1-201 or a statement why any such instrument of which he may be aware is not being probated;

(2) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under 72-3-501 through 72-3-508.

History: **En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(4).**

72-3-205. Application for appointment of successor personal representative. (1) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(2) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in 72-3-525 or whose appointment has been terminated by death or removal shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(5), (6).

72-3-206 through 72-3-210 reserved.

72-3-211. Informal probate — notice requirements. (1) The moving party must give notice as described by 72-1-301 of his application for informal probate:

(a) to any person demanding it pursuant to 72-3-106; and

(b) to any personal representative of the decedent whose appointment has not been terminated.

(2) No other notice of informal probate is required.

History: En. 91A-3-306 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-306.

72-3-212. Informal probate — clerk to make findings. In an informal proceeding for original probate of a will, the clerk shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103;

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed, and apparently unrevoked will is in the clerk's possession;

(6) any notice required by 72-3-106 has been given and that the application is not within 72-3-213(5); and

(7) it appears from the application that the time limit for original probate has not expired.

History: En. 91A-3-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-303(1); amd. Sec. 73, Ch. 494, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in (3) deleted reference to subsection (21) of 72-1-103; and made minor changes in style.

72-3-213. Rules for grant or denial of informal probate. (1) A will that appears to have the required signatures and that contains an attestation clause showing that requirements of execution under 72-2-522 or 72-2-526 have been met must be probated without further proof. In other cases the clerk may assume execution if the will appears to be properly executed or may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(2) The application must be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (3), if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) Informal probate of a will that has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(4) A will from a place that does not provide for probate of a will after death and that is not eligible for probate under 72-3-212 may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

(5) Application for informal probate that relates to one or more of a known series of testamentary instruments (other than a will and one or more codicils to the will), the latest of which does not expressly revoke the earlier, must be declined.

History: **(1) thru (4)En. 91A-3-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 516, L. 1975; Sec. 91A-3-303, R.C.M. 1947; (5)En. 91A-3-304 by Sec. 1, Ch. 365, L. 1974; Sec. 91A-3-304, R.C.M. 1947; R.C.M. 1947, 91A-3-303(2) thru (5), 91A-3-304; amd. Sec. 10, Ch. 582, L. 1989; amd. Sec. 74, Ch. 494, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 494 in (1) deleted reference to 72-2-303; and made minor changes in style.

72-3-214. Power of clerk to deny informal probate — effect of denial. (1) If the clerk is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of 72-3-212 and 72-3-213 or any other reason, he may decline the application.

(2) A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

History: **En. 91A-3-305 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-305.**

72-3-215. Clerk to issue statement of informal probate — effect — procedural defect not to void probate. (1) Upon receipt of an application requesting informal probate of a will, the clerk, upon making the findings required by 72-3-212 and 72-3-213, shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent's death.

(2) Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding.

(3) No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

History: **En. 91A-3-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-302.**

72-3-216 through 72-3-220 reserved.

72-3-221. Informal appointment — notice requirements. (1) The moving party must give notice as described by 72-1-301 of his intention to seek an appointment informally:

(a) to any person demanding it pursuant to 72-3-106; and

(b) to any person having a prior or equal right to appointment not waived in writing and filed with the court.

(2) No other notice of an informal appointment proceeding is required.

History: **En. 91A-3-310 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-310.**

72-3-222. Informal appointment — clerk to make findings. In informal appointment proceedings, the clerk shall determine whether:

(1) the application for informal appointment of a personal representative is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103;

(4) on the basis of the statements in the application, venue is proper;

(5) any will to which the requested appointment relates has been formally or informally probated, but this requirement does not apply to the appointment of a special administrator;

(6) any notice required by 72-3-106 has been given;

(7) from the statements in the application, the person whose appointment is sought has priority entitling the person to the appointment.

History: En. 91A-3-308 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-308(1); amd. Sec. 75, Ch. 494, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in (3) deleted reference to subsection (21) of 72-1-103; and made minor changes in style.

72-3-223. Rules for denial of informal appointment. (1) Unless 72-3-523 controls, the application must be denied if it indicates:

(a) that a personal representative who has not filed a written statement of resignation as provided in 72-3-525 has been appointed in this or another county of this state;

(b) that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile; or

(c) that other requirements of 72-3-222 have not been met.

(2) If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state and which is not filed for probate in this court, the clerk shall decline the application.

History: En. 91A-3-308, 91A-3-311 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-308(2), 91A-3-311.

72-3-224. Informal appointment — power of clerk to deny — effect of denial. (1) If the clerk is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of 72-3-222, 72-3-223, and 72-3-225 or for any other reason, he may decline the application.

(2) A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

History: En. 91A-3-309 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-309.

72-3-225. Duty of clerk to make appointment — effect. (1) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in 72-3-701, if at least 120 hours have elapsed since the decedent's death, the clerk, after making the findings required by 72-3-222 and 72-3-223, shall appoint the applicant subject to qualification and acceptance, provided that if the decedent was a nonresident, the clerk shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant or unless the decedent's will directs that his estate be subject to the laws of this state.

(2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment and the office of personal representative created thereby is subject to termination as provided in 72-3-521 through 72-3-526 but is not subject to retroactive vacation.

History: En. 91A-3-307 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-307.

Part 3

Formal Testacy and Appointment Proceedings

72-3-301. Petition for formal testacy or appointment — contents — last will. (1) Petitions for formal probate of a will or for adjudication of intestacy with or without request for appointment of a personal representative must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:

(a) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;

(b) contains the statements required for informal applications as stated in the five subsections under 72-3-202, the statements required by subsections (b) and (c) of 72-3-203(1); and

(c) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by 72-3-202 and 72-3-204, and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by 72-3-204(2) may be omitted.

History: En. 91A-3-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-402.

72-3-302. Formal testacy proceedings — nature — how and when commenced. (1) A formal testacy proceeding is litigation to determine whether a decedent left a valid will.

(2) A formal testacy proceeding may be commenced by an interested person filing a petition:

(a) as described in 72-3-301(1) in which he requests that the court, after notice and hearing, enter an order probating a will;

(b) to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application; or

(c) for an order that the decedent died intestate.

(3) A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated.

(4) A formal testacy proceeding may but need not involve a request for appointment of a personal representative.

History: En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-401(part).

Cross-References

Undue influence, 28-2-407.

72-3-303. Formal proceeding supersedes all informal applications. During the pendency of a formal testacy proceeding, the clerk shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

History: En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-401(part).

72-3-304. Effect of formal proceeding on power of informally appointed personal representative. Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

History: En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-401(part).

72-3-305. Notice of hearing on petition for formal testacy proceeding. (1) Upon commencement of a formal testacy proceeding, the court or clerk shall fix a time and place of hearing.

(2) Notice shall be given in the manner prescribed by 72-1-301 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under 72-3-106 of this code. Notice shall be given to the following persons:

(a) the surviving spouse, children, and other heirs of the decedent;

(b) the devisees and executors named in any will that is being or has been probated or offered for informal or formal probate in the county or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere; and

(c) any personal representative of the decedent whose appointment has not been terminated.

(3) In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(4) Notice may be given to other persons.

History: En. 91A-3-403 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 3, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-403(1).

72-3-306. Notice and procedure when fact of death in doubt. (1) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered or certified mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of or make and report back concerning a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(a) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(b) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(c) by engaging the services of an investigator.

(2) The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

History: En. 91A-3-403 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 3, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-403(2).

72-3-307. Hearings and proof in uncontested cases. If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of 72-3-313 and 72-3-316 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

History: En. 91A-3-405 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-405.

72-3-308. Written objections to probate. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

History: En. 91A-3-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-404.

72-3-309. Testimony of attesting witnesses in contested cases — presumptions for self-proved will. (1) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state and competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed, subject to rebuttal, without the testimony of any witness, upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

History: En. 91A-3-406 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-406; amd. Sec. 2, Ch. 6, L. 1979.

72-3-310. Burdens in contested cases. In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof.

History: En. 91A-3-407 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-407(part).

Cross-References

Duress, 28-2-402.

Kinds of fraud, 28-2-404 through 28-2-406.

Undue influence, 28-2-407.

Kinds of mistake, 28-2-408 through 28-2-411.

72-3-311. Priority of determinations in contested cases. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

History: En. 91A-3-407 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-407(part).

72-3-312. Effect of final order in another state. A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes or is based upon a finding that the decedent was domiciled at his death in the state where the order was made.

History: En. 91A-3-408 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-408.

72-3-313. Order for formal probate. (1) After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper, and that the proceeding was commenced within the limitation prescribed by 72-3-122, it shall determine the decedent's domicile at death, his heirs, and his state of testacy. Any will found to be valid and unrevoked shall be formally probated.

(2) Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by 72-3-523.

(3) The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead.

History: En. 91A-3-409 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-409(part).

72-3-314. Probate of more than one instrument — order. (1) If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication.

(2) If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may but need not indicate how any provisions of a particular instrument are

affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of 72-3-317.

History: **En. 91A-3-410 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-410.**

72-3-315. Order of partial intestacy. If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

History: **En. 91A-3-411 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-411.**

72-3-316. Will from place where probate unprovided for. A will from a place which does not provide for probate of a will after death may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

History: **En. 91A-3-409 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-409(part).**

72-3-317. Effect of formal testacy order — modification or vacation — fact of death — remedies of alleged decedent. Subject to appeal and subject to vacation as provided herein and in 72-3-318, a formal testacy order under 72-3-313 through 72-3-316, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs, except that:

(1) the court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication;

(2) if intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death, or were given no notice of any proceeding concerning his estate, except by publication;

(3) a petition for vacation under either (1) or (2) above must be filed prior to the earlier of the following time limits:

(a) if a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing of the closing statement;

(b) whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by 72-3-122 when it is no longer possible to initiate an original proceeding to probate a will of the decedent;

(c) 12 months after the entry of the order sought to be vacated;

(4) the order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs;

(5) the finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under 72-3-306 was made. If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

History: En. 91A-3-412 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-412.

72-3-318. Modification or vacation for other cause. For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

History: En. 91A-3-413 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-413.

72-3-319. Formal appointment proceedings. (1) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by 72-3-301 as well as by this section. In other cases, the petition shall contain or adopt the statements required by 72-3-202 and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(2) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative, and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under 72-3-501 through 72-3-508, make a proper appointment, and if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under 72-3-526.

History: En. 91A-3-414 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-414.

Part 4
Supervised Administration

72-3-401. Supervised administration — nature and purpose. Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court, which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding.

History: En. 91A-3-501 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-501(part).

72-3-402. Petition and order. (1) A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied.

(2) After notice to interested persons, the court shall order supervised administration of a decedent's estate:

(a) if the decedent's will directs supervised administration, unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

(b) only upon a finding that it is necessary for protection of persons interested in the estate if the decedent's will directs unsupervised administration; or

(c) in other cases if the court finds that supervised administration is necessary under the circumstances.

History: En. 91A-3-502 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-502.

72-3-403. Effect on other proceedings and previously appointed personal representative. (1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(2) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by 72-3-303 and 72-3-304.

(3) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

History: En. 91A-3-503 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-503.

72-3-404. Powers and duties of personal representative. (1) A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party.

(2) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

(3) Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative.

History: En. 91A-3-501, 91A-3-504 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-501(part), 91A-3-504.

72-3-405. Interim orders. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

History: En. 91A-3-505 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-505(part).

72-3-406. Closing orders. Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under 72-3-1001 and 72-3-1002.

History: En. 91A-3-505 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-505(part).

Part 5

Personal Representative Appointment Priorities, Bond, and Termination

72-3-501. Who may not be personal representative. No person is qualified to serve as a personal representative who is:

(1) under the age of 18;

(2) a person whom the court finds unsuitable in formal proceedings.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(6).

72-3-502. Priorities for appointment. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

(3) the custodial parent of a minor decedent;

(4) other devisees of the decedent;

(5) the surviving spouse of the decedent;

(6) other heirs of the decedent;

(7) public administrator;

(8) 45 days after the death of the decedent, any creditor.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(1); amd. Sec. 1, Ch. 219, L. 1989.

72-3-503. Objection to appointment. (1) An objection to an appointment can be made only in formal proceedings.

(2) In case of objection the priorities stated in 72-3-502 apply, except that:

(a) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

(b) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value or, in default of this accord, any suitable person.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(2).

72-3-504. Renunciation — nomination of other — two or more persons sharing priority. (1) A person entitled to letters under (2) through (6) of 72-3-502 may nominate a qualified person to act as personal representative.

(2) Any person entitled to letters may renounce his right to nominate or to an appointment by appropriate writing filed with the court.

(3) When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment. If they are unable to concur in nominating another to act for them or in applying for appointment, the court may appoint any qualified person.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(3).

72-3-505. Rights of conservators relating to appointment. Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(4).

Cross-References

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

72-3-506. Priority of domiciliary personal representative. A personal representative appointed by a court of the decedent's domicile has priority over all other persons, except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(7).

72-3-507. Appointment of one not having priority. Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to 72-3-504, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(5).

72-3-508. Application of priority provisions to appointment of successor. Sections 72-3-501 through 72-3-507 govern priority for appointment of a successor personal representative but do not apply to the selection of a special administrator.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(8).

72-3-509 and 72-3-510 reserved.

72-3-511. Acceptance of appointment — consent to jurisdiction. By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative or mailed to him by ordinary first-class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

History: En. 91A-3-602 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-602.

72-3-512. Qualification — filing of bond and statement of acceptance. Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

History: En. 91A-3-601 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-601.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-513. Bond — when required. (1) No bond is required of a personal representative appointed in informal proceedings, except:

(a) upon the appointment of a special administrator;

(b) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or

(c) when bond is required under 72-3-514.

(2) Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding, except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary.

(3) No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

History: En. 91A-3-603 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-603.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-514. Demand for bond by interested person. (1) Any person apparently having an interest in the estate worth in excess of $1,000 or any creditor having a claim in excess of $1,000 may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in 72-3-513 or 72-3-515.

(2) After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate.

(3) Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for his removal and appointment of a successor personal representative.

History: En. 91A-3-605 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-605.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-515. Bond amount — security — reduction. (1) If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the clerk indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the clerk or give other suitable security in an amount not less than the estimate.

(2) The clerk shall determine that the bond is duly executed by a corporate surety or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security.

(3) The clerk may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

History: En. 91A-3-604 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-604.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-516. Terms of bond — liability of surety. (1) The following requirements and provisions apply to any bond required by this part:

(a) Bonds shall name the state as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(d) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(e) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: En. 91A-3-606 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-606.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-517 through 72-3-520 reserved.

72-3-521. Termination of appointment — general effect. Termination of appointment of a personal representative occurs as indicated in 72-3-522 to 72-3-526, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination or relieve him of the duty to preserve assets subject to his control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative but terminates his authority to represent the estate in any pending or future proceeding.

History: En. 91A-3-608 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-608.

72-3-522. Termination of appointment — death or disability. (1) The death of a personal representative or the appointment of a conservator for the estate of a personal representative terminates his appointment.

(2) Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

History: En. 91A-3-609 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-609.

72-3-523. Termination of appointment — change of testacy status. Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder does not terminate the appointment of the personal representative although his powers may be reduced as provided in 72-3-304. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings or from the informal probate changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will or as in intestacy, as the case may be.

History: En. 91A-3-612 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-612.

72-3-524. Termination of appointment — closing of estate. (1) An appointment of a personal representative terminates, as provided in 72-3-1004, 1 year after the filing of a closing statement.

(2) An order closing an estate as provided in 72-3-1001, 72-3-1002, or 72-3-1003 terminates an appointment of a personal representative.

History: En. 91A-3-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-610(1), (2).

72-3-525. Termination of appointment — voluntary. A personal representative may resign his position by filing a written statement of resignation with the clerk after he has given at least 15 days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

History: En. 91A-3-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-610(3).

72-3-526. Termination of appointment — removal for cause. (1) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative and to other persons as the court may order. Except as otherwise ordered as provided in 72-3-617, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of or under the control of the personal representative being removed.

(2) Cause for removal exists:

(a) when removal would be in the best interests of the estate; or

(b) if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

(3) Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

History: **En. 91A-3-611 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-611.**

72-3-527. Successor personal representative. (1) Parts 2 and 3 of this chapter govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated.

(2) After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process, or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative.

(3) Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

History: **En. 91A-3-613 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-613.**

Part 6

Personal Representative Powers, Duties, and Compensation

72-3-601. Time of accrual of duties and powers — power of executor prior to appointment — ratification. (1) The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter.

(2) Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral, and burial arrangements.

(3) A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

History: **En. 91A-3-701 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-701.**

72-3-602. Priority among different letters. A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

History: En. 91A-3-702 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-702.

72-3-603. Notice of appointment to heirs and devisees. (1) Not later than 30 days after his appointment, every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate.

(2) (a) The information must:

(i) include the name and address of the personal representative;

(ii) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(iii) indicate whether bond has been filed; and

(iv) describe the court where papers relating to the estate are on file.

(b) The information must state that the estate is being administered by the personal representative under the uniform probate code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.

(3) The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers, or other duties.

(4) A personal representative may inform other persons of his appointment by delivery or ordinary first-class mail.

History: En. 91A-3-705 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-705; amd. Sec. 11, Ch. 582, L. 1989.

72-3-604. Standing to sue. Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.

History: En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(3).

Cross-References

Parties plaintiff and defendant — capacity, Rule 17, M.R.Civ.P. (see Title 25, ch. 20).

72-3-605. Personal representative to proceed without court order — power to invoke jurisdiction. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified under this code or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

History: En. 91A-3-704 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-704.

72-3-606. Possession and protection of estate. (1) Except as otherwise provided by a decedent's will and subject to the provisions of chapter 12, part 7, every personal representative has a right to and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration.

(2) The personal representative shall pay taxes on and take all steps reasonably necessary for the management, protection, and preservation of the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

History: En. 91A-3-708 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-708.

Cross-References

Property of deceased — suicide note, 7-4-2917.

Estate tax, Title 72, ch. 16, part 9.

72-3-607. Inventory — appraisal — copy to department of revenue. (1) Within the time required for the filing of a United States estate tax return plus any extensions granted by the internal revenue service, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory, which inventory shall include listing of all property which:

(a) the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of his death;

(b) the decedent had possessory or dispository rights over at the time of his death or had disposed of for less than its fair market value within 3 years of his death; or

(c) was affected by the decedent's death for the purpose of inheritance or estate taxes.

(2) The inventory shall include a statement of the full and true value of the decedent's interest in every item listed in such inventory. In this connection the personal representative shall appoint one or more qualified and disinterested persons to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

(3) The personal representative shall send a copy of the inventory to interested persons who request it, or he may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value shall be mailed to the department of revenue.

History: En. 91A-3-706 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 4, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-706; amd. Sec. 12, Ch. 582, L. 1989.

72-3-608. Repealed. Sec. 18, Ch. 52, L. 1981.

History: En. 91A-3-715.1 by Sec. 6, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-715.1.

72-3-609. Supplementary inventory — copy to department of revenue. If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed or furnish copies thereof or information thereof to persons interested in the new information and in any case shall mail a copy of it to the department of revenue.

History: En. 91A-3-707 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-707.

72-3-610. General duties — fiduciary. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees under the laws of the state of Montana. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

History: En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(1).

Cross-References

Trust code, Title 72, ch. 33 through 36.

72-3-611. No surcharge for authorized acts generally — limitation. (1) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and of this code, an informally probated will is authority to administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding.

(2) Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code.

History: En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(2).

72-3-612. No individual liability — exceptions — certain claims to be brought against personal representative. (1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

History: En. 91A-3-808 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-808.

72-3-613. Transactions authorized for personal representative. Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees generally. If the personal representative is authorized to invest funds in United States obligations, he may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end

management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) with the consent of the heirs or devisees or the court, abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) with the consent of the heirs or devisees or the court, effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances; provided, however, a personal representative may not, without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate he represents, nor may he be interested in the sale. All sales must be fairly conducted and made for the best price obtainable.

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) in the same business form for a period of not more than 4 months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including good will;

(b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

(c) throughout the period of administration, if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) satisfy and settle claims and distribute the estate as provided in this code.

History: En. 91A-3-713 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-713; amd. Sec. 1, Ch. 145, L. 1989.

Cross-References

Montana Health Facility Authority bonds — legal investment, 90-7-113.

72-3-614. Power to recover property which is subject of void or voidable transfer. The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

History: En. 91A-3-709 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-709.

Cross-References

Liens, Title 71, ch. 3.

72-3-615. Transaction involving conflict of interest — voidable — exceptions. Any sale or encumbrance to the personal representative, his spouse, agent, or attorney or any corporation or trust in which he has a substantial beneficial interest or any transaction which is affected by a substantial conflict of interest on the part of the personal representative is voidable by any person interested in the estate except one who has consented after fair disclosure, unless:

(1) the will or a contract entered into by the decedent expressly authorized the transaction; or

(2) the transaction is approved by the court after notice to interested persons.

History: En. 91A-3-711 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-711.

72-3-616. Improper exercise of power — breach of fiduciary duty. (1) If any exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust.

(2) The rights of purchasers and others dealing with a personal representative shall be determined as provided in 72-3-615 and 72-3-618.

History: En. 91A-3-710 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-710.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

72-3-617. Order restraining personal representative. (1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution or exercise of any powers or discharge of any duties of his office or make any other order to secure proper performance of his duty if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(2) The matter shall be set for hearing within 10 days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

History: En. 91A-3-607 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-607.

Cross-References

Parties plaintiff and defendant — capacity, Rule 17, M.R.Civ.P. (see Title 25, ch. 20).

72-3-618. Persons dealing with personal representative — protection. (1) A person who in good faith and without notice either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in 72-3-404(3), no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof.

(2) A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative.

(3) The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries, nor does it in any way limit the provisions of 72-16-432 and 72-16-433.

History: **En. 91A-3-712 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-712.**

72-3-619 and 72-3-620 reserved.

72-3-621. Powers and duties of successor personal representative. A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

History: **En. 91A-3-716 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-716.**

72-3-622. Corepresentatives — when joint action required. If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply:

(1) when any corepresentative receives and receipts for property due the estate;

(2) when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate; or

(3) when a corepresentative has been delegated to act for the others.

History: **En. 91A-3-717 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-717(part).**

72-3-623. Persons dealing with single corepresentative — protection. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

History: **En. 91A-3-717 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-717(part).**

72-3-624. Powers of remaining corepresentative. Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

History: **En. 91A-3-718 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-718.**

72-3-625 through 72-3-630 reserved.

72-3-631. Compensation of personal representative. (1) A personal representative is entitled to reasonable compensation for his services. Such compensation shall not exceed 3% of the first $40,000 of the value of the estate as reported for federal estate tax or state inheritance tax purposes, whichever is larger, and 2% of the value of the estate in excess of $40,000 as reported for federal estate tax or state inheritance tax purposes, whichever is larger. However, a personal representative is entitled to a minimum compensation of the lesser of $100 or the value of the gross estate.

(2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative shall not exceed 2% of the interest passing.

(3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative shall not exceed 2% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation shall not exceed 2% of the value of the estate, except that it shall not be less than $100.

(4) If there is more than one personal representative, only one compensation is allowed.

(5) The court may allow additional compensation for extraordinary services. Such additional compensation shall not be greater than the amount which is allowed for the original compensation.

(6) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

History: **En. 91A-3-719 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-719; amd. Sec. 1, Ch. 424, L. 1979.**

Cross-References

Compensation of public administrator, 72-15-301.

Inheritance and estate taxes, Title 72, ch. 16.

72-3-632. Expenses of personal representative in estate litigation. If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements, including reasonable attorneys' fees incurred.

History: **En. 91A-3-721 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-721.**

72-3-633. Compensation of attorney. (1) If the services of an attorney are engaged by the personal representative, the compensation of such attorney shall not exceed 1 1/2 times the compensation allowable to the personal representative.

(2) If the services of an attorney are engaged by the personal representative to assist in the termination of joint tenancies, the compensation allowed the attorney shall not exceed 3% of the interest passing.

(3) If the services of an attorney are engaged in connection with the termination of a life estate, the compensation allowed the attorney shall not exceed 3% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the attorney's compensation shall not exceed 3%, except that it shall not be less than $100.

(4) If the services of more than one attorney are engaged, only one compensation shall be allowed.

(5) In cases where further compensation may be allowed to an attorney, the same must be fixed and determined by the court upon good cause shown after notice and hearing of an application therefor.

History: En. 91A-3-720 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-720.

72-3-634. Proceedings for review of employment of agents and compensation of personal representatives and employees. (1) Upon the filing of a motion for settlement of fees by the court filed by an interested person, the personal representative, or the person employed by the personal representative and after notice to all interested persons, the propriety of employment of any person by a personal representative, including any attorney, auditor, investment advisor, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services shall be reviewed and determined by the court.

(2) In any dispute concerning fees, the court shall set the fee.

(3) Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

History: En. 91A-3-722 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-722.

Part 7

Special Administrator

72-3-701. Special administrator — how and when appointed. A special administrator may be appointed:

(1) informally by the clerk on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in 72-3-522;

(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration, including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

History: En. 91A-3-614 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-614.

72-3-702. Special administrator — who may be appointed. (1) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(2) In other cases, any proper person may be appointed special administrator.

History: En. 91A-3-615 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-615.

72-3-703. Special administrator appointed informally — powers and duties. A special administrator appointed by the clerk in informal proceedings pursuant to 72-3-701(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor, and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the code necessary to perform his duties.

History: En. 91A-3-616 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-616.

72-3-704. Special administrator — formal proceedings — power and duties. A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative, except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct.

History: En. 91A-3-617 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-617.

72-3-705. Special administrator — termination of appointment. The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in 72-3-521 through 72-3-526.

History: En. 91A-3-618 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-618.

Part 8

Creditors' Claims

72-3-801. Notice to creditors. (1) Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for 3 successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred.

(2) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within 4 months from the published notice if given as provided in subsection (1) or within 30 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (1) or a similar notice.

(3) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section.

History: En. 91A-3-801 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-801; amd. Sec. 1, Ch. 500, L. 1989.

72-3-802. Statutes of limitations — waiver — suspension. (1) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

(2) The running of any statute of limitations measured from some other event than death or the giving of notice to creditors is suspended during the 4 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow.

(3) For purposes of any statute of limitations, the proper presentation of a claim under 72-3-804 is equivalent to commencement of a proceeding on the claim.

History: En. 91A-3-802 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-802; amd. Sec. 2, Ch. 500, L. 1989.

72-3-803. Nonclaim — limitations on presentation of claims — exceptions. (1) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following time limitations:

(a) within 1 year after the decedent's death; or

(b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time provided in 72-3-801(1) for all creditors barred by publication. However, claims barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors in this state are also barred in this state.

(2) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within the latter of 4 months after it arises or the time specified in subsection (1)(a).

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

History: **En. 91A-3-803 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 352, L. 1975; R.C.M. 1947, 91A-3-803; amd. Sec. 3, Ch. 6, L. 1979; amd. Sec. 3, Ch. 500, L. 1989.**

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9.

Mortgages, Pledges, and Liens, Title 71.

Inheritance and estate taxes, Title 72, ch. 16.

72-3-804. Manner of presentation of claims. Claims against a decedent's estate may be presented as follows:

(1) The claimant shall mail to the personal representative return receipt requested a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative, in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than 60 days after the personal representative has mailed a notice of disallowance, but in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period or to avoid injustice the court, on petition, may order an extension of the 60-day period, but in no event shall the extension run beyond the applicable statute of limitations.

History: **En. 91A-3-804 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-804.**

72-3-805. Allowance and disallowance of claims — interest on allowed claims. (1) As to claims presented in the manner described in 72-3-804 within the time limit prescribed in 72-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(2) After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this section. The personal representative may change the allowance to a disallowance, in whole or in part, prior to payment, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (1). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (1). After it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

(3) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1). Notice in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(4) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(5) Unless otherwise provided in any judgment in another court entered against the personal representative, an allowed claim bears interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case the claim bears interest in accordance with that provision.

History: En. 91A-3-806 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 7, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-806; amd. Sec. 13, Ch. 582, L. 1989.

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

72-3-806. Counterclaims — deduction. (1) In allowing a claim, the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess.

(2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

History: En. 91A-3-811 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-811.

72-3-807. Classification of claims as to priority of payment. (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(a) costs and expenses of administration;

(b) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;

(c) federal estate and Montana state estate and inheritance taxes;

(d) debts with preference under federal and Montana law;

(e) other federal and Montana state taxes;

(f) all other claims.

(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

History: En. 91A-3-805 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 352, L. 1975; R.C.M. 1947, 91A-3-805.

Cross-References

Wages — preferred debts, 71-3-302.

72-3-808. Payment of claims. (1) Upon the expiration of the earlier of the time limitations provided in 72-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration.

(2) By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(3) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

History: En. 91A-3-807 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-807; amd. Sec. 4, Ch. 500, L. 1989.

72-3-809 and 72-3-810 reserved.

72-3-811. Secured claims. Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

(1) if the creditor exhausts his security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security; or

(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

History: En. 91A-3-809 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-809.

72-3-812. Encumbered assets. (1) If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate.

(2) Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

History: En. 91A-3-814 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-814.

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9.

Mortgages, Pledges, and Liens, Title 71.

72-3-813. Execution and levies prohibited. No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

History: En. 91A-3-812 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-812.

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9.

Mortgages, Pledges, and Liens, Title 71.

72-3-814. Claims not due and contingent or unliquidated claims. (1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(2) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(a) If the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account.

(b) Arrangement for future payment or possible payment on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

History: En. 91A-3-810 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-810.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Mortgages, Title 71, ch. 1.

Trust code, Title 72, ch. 33 through 36.

72-3-815. Compromise of claims. When a claim against the estate has been presented in any manner, the personal representative with the consent of the heirs or devisees or the court may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

History: En. 91A-3-813 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-813.

72-3-816 through 72-3-820 reserved.

72-3-821. Administration in more than one state — payment of claims. (1) All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(3) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

History: En. 91A-3-815 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-815.

72-3-822. Distribution to domiciliary personal representative — exceptions. (1) The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

(a) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;

(b) the personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

(c) the court orders otherwise in a proceeding for a closing order under 72-3-1001 or incident to the closing of a supervised administration.

(2) In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this chapter.

History: En. 91A-3-816 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-816.

Part 9

Special Provisions Relating to Distribution

72-3-901. Abatement. (1) Except as provided in subsection (3) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

(a) property not disposed of by the will;

(b) residuary devises;

(c) general devises;

(d) specific devises.

(2) For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged and, upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(3) If the will expresses an order of abatement or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(4) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in or contribution from other interests in the remaining assets.

History: En. 91A-3-902 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-902.

72-3-902. Distribution in kind preferred — method — valuation. Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in 72-2-413 shall receive the items selected.

(2) Any homestead or family allowance or devise of a stated sum of money may be satisfied in kind, provided:

(a) the person entitled to the payment has not demanded payment in cash;

(b) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(c) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under subsection (2), any security regularly traded on a recognized exchange, if distributed in kind, is valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and asked at the close of that day. An asset consisting of a sum owed the decedent or the estate by a solvent debtor as to which there is no known dispute or defense is valued at the sum due with accrued interest or

discounted to the date of distribution. For an asset which has no readily ascertainable value, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of any asset as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the asset may have been previously appraised.

(4) The residuary estate shall be distributed in any equitable manner.

History: En. 91A-3-906 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-906(1); amd. Sec. 14, Ch. 582, L. 1989.

Cross-References

Homestead allowance, 72-2-412.

Family allowance, 72-2-414.

72-3-903. Proposal for distribution — delivery — objection. (1) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution.

(2) The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

History: En. 91A-3-906 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-906(2).

72-3-904. Distribution in kind — evidence of title. If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property.

History: En. 91A-3-907 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-907.

72-3-905. Distribution by personal representative conclusive evidence of succession to interest by distributee. Proof that a distributee has received an instrument or deed of distribution of assets in kind or payment in distribution from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

History: En. 91A-3-908 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-908.

72-3-906. Improper distribution or payment — liability of distributee or payee. Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid or a claimant who was improperly paid is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

History: En. 91A-3-909 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-909.

72-3-907. Purchases from distributees protected. (1) If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed.

(2) This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section shall be prima facie evidence that such transfer was made for value.

(3) For purposes of this section, the term purchaser includes any lessee or other person acquiring any interest in the property for value.

History: En. 91A-3-910 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-910; amd. Sec. 9, Ch. 52, L. 1981.

72-3-908 through 72-3-910 reserved.

72-3-911. Successors' rights if no administration. (1) In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession.

(2) Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption, or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent.

(3) Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

History: En. 91A-3-901 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-901.

Cross-References

Intestate succession, Title 72, ch. 2, part 1.
Homestead allowance, 72-2-412.
Exempt property, 72-2-413.

72-3-912. Successor's indebtedness to estate offset against interest — defenses available. The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

History: En. 91A-3-903 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-903.

72-3-913. Interest on general pecuniary devise. General pecuniary devises bear interest at the legal rate beginning 1 year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

History: En. 91A-3-904 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-904.

Cross-References

Legal interest, 31-1-106.

72-3-914. Partition for purpose of distribution. When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court, prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

History: En. 91A-3-911 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-911.

72-3-915. Private agreements among successors as to distribution — testamentary trustee as successor. (1) Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent or under the laws of intestacy in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties.

(2) Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

History: En. 91A-3-912 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-912.

Cross-References

Inheritance and estate taxes, Title 72, ch. 16.

72-3-916. Distribution to trustee — registration — bond. (1) Before distributing to a trustee, the personal representative may require that the trust be registered, if the state in which it is to be administered provides for registration, and that the trustee inform in writing the current beneficiaries and, if possible, one or more persons who under 72-1-303 may represent beneficiaries with future interests of his name and address and provide each with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration.

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (1) and (2).

History: En. 91A-3-913 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-913; amd. Sec. 4, Ch. 6, L. 1979.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-3-917. Distribution to person under disability. (1) A personal representative may discharge his obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge his obligation to distribute to a minor or person under other disability as authorized by 72-5-501 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person; or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding $10,000 a year or property not exceeding $10,000 in value, unless the court authorizes a larger amount or greater value.

(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of that person, but may not pay himself except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection (3).

History: En. 91A-3-915 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-915; amd. Sec. 15, Ch. 582, L. 1989.

Cross-References

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

72-3-918. Disposition of unclaimed assets — escheat. (1) If an heir, devisee, or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any, otherwise to the department of revenue to be deposited in the state escheat fund as provided in chapter 14, as amended.

(2) Any person having any claim to a share deposited in the state escheat fund under the provisions of this code shall follow the procedures set out in chapter 14, concerning escheated estates, to claim such share.

History: En. 91A-3-914 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-914.

Part 10

Closing Estates

72-3-1001. Formal proceedings terminating administration — testate or intestate — order of complete settlement. (1) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after 1 year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired.

(2) The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs, and to adjudicate the final settlement and distribution of the estate.

(3) After notice to all interested persons and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

History: En. 91A-3-1001 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1001(1).

72-3-1002. Order of complete settlement as to persons previously omitted or unnotified in previous formal testacy proceeding. If one or more heirs or devisees were omitted as parties in or were not given notice of a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under 72-3-1001 and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

History: En. 91A-3-1001 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1001(2).

72-3-1003. Formal proceedings terminating administration under informally probated will — settlement order construing will without adjudicating testacy. (1) A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time and a devisee may petition after 1 year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired.

(2) The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will, and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of 72-3-1001 and 72-3-1002.

History: En. 91A-3-1002 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1002.

72-3-1004. Closing estate by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than 6 months after the date of original appointment of a general personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has:

(a) determined that the time limitation for presentation of creditors' claims has expired;

(b) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration, and estate, inheritance, and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled; if any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees, or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities;

(c) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby; and

(d) complied with the provisions of 72-3-1006.

(2) If no proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

History: En. 91A-3-1003 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1003; amd. Sec. 5, Ch. 500, L. 1989.

Cross-References

Notice to creditors, 72-3-801.

Inheritance and estate taxes, Title 72, ch. 16.

72-3-1005. Final accounting required to close estate. (1) Before an estate may be finally closed and the personal representative relieved of his duties and obligations, he shall either file with the court or deliver to all interested persons an accounting under oath showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants and all other matters necessary to show the state of its affairs.

(2) Any interested person at any time during the course of the administration of an estate may for good cause shown require further accountings.

(3) If the personal representative is the sole residual beneficiary of the estate, no accounting need be made.

History: En. 91A-3-1012 by Sec. 5, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-1012; amd. Sec. 10, Ch. 52, L. 1981.

72-3-1006. Certificate or receipt showing taxes paid required to close estate. (1) In all probate proceedings under this code, before final distribution to successors is made and before any petition is granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, there shall have been filed with the clerk:

(a) a certificate from the department of revenue stating that any inheritance tax due on the assets of the estate has been paid; or

(b) an agreement with the department of revenue for extension of time for payment of inheritance taxes; or

(c) a receipt from the county treasurer stating that any inheritance tax due on the assets of the estate has been paid.

(2) This section shall not prohibit such partial distribution as may become necessary in the course of administration.

History: En. 91A-3-1004 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 99, L. 1975; R.C.M. 1947, 91A-3-1004; amd. Sec. 11, Ch. 52, L. 1981.

Cross-References

Inheritance and estate taxes, Title 72, ch. 16.

72-3-1007 through 72-3-1010 reserved.

72-3-1011. Limitation on actions against personal representative. Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within 6 months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

History: En. 91A-3-1006 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1006.

Cross-References

Kinds of fraud, 28-2-404 through 28-2-406.

Remedies for fraud — Statute of Limitations, 72-1-111.

72-3-1012. Liability of distributees to claimants. (1) After assets of an estate have been distributed and subject to 72-3-1013, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts in excess of the value of his distribution as of the time of distribution.

(2) As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to

join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

History: **En. 91A-3-1005 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1005.**

72-3-1013. Limitation on actions against distributees. (1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim and the right of any heir or devisee or of a successor personal representative acting in their behalf to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of 3 years after the decedent's death or 1 year after the time of distribution thereof.

(2) This section does not bar an action to recover property or value received as the result of fraud.

History: **En. 91A-3-1007 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1007.**

Cross-References

Kinds of fraud, 28-2-404 through 28-2-406.

Remedies for fraud — Statute of Limitations, 72-1-111.

72-3-1014. Certificate discharging liens securing fiduciary performance. After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing so far as is known by the applicant that no action concerning the estate is pending in any court, is entitled to receive a certificate from the clerk that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety but does not preclude action against the personal representative or the surety.

History: **En. 91A-3-1008 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1008.**

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

72-3-1015. Estate to be closed within two years. (1) If an estate has not been closed within 2 years from the date of appointment of the personal representative, the supreme court administrator shall notify the district judge thereof. The judge shall order the personal representative and his attorney to appear before the court and show cause why the estate has not been closed.

(2) If, after the show cause hearing, the judge determines that good cause does not exist for failure to close the estate, the judge may make an order directing that the estate be closed within 30 days and that the personal representative and his attorney receive no fee or other compensation from the estate.

History: **En. 91A-3-1011 by Sec. 1, Ch. 191, L. 1975; R.C.M. 1947, 91A-3-1011; amd. Sec. 5, Ch. 104, L. 1981.**

72-3-1016. Subsequent administration upon discovery of other property. If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after 1 year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

History: En. 91A-3-1009 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1009.

Part 11

Collection of Personal Property by Affidavit and Summary Administration Procedure for Small Estates

72-3-1101. Collection of personal property by affidavit. (1) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed $7,500;

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1).

History: En. 91A-3-1201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1201; amd. Sec. 1, Ch. 124, L. 1981.

72-3-1102. Effect of affidavit. (1) The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit.

(2) If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto.

(3) Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any person representative of the estate or to any other person having a superior right.

History: En. 91A-3-1202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1202.

72-3-1103. Small estates — summary administration procedure. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to the creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in 72-3-1104.

History: En. 91A-3-1203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1203; amd. Sec. 2, Ch. 124, L. 1981; amd. Sec. 16, Ch. 582, L. 1989.

Cross-References

Exempt property and allowances, Title 72, ch. 2, part 4.

72-3-1104. Small estates — closing by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004.

History: En. 91A-3-1204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1204; amd. Sec. 3, Ch. 124, L. 1981; amd. Sec. 17, Ch. 582, L. 1989.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Exempt property and allowances, Title 72, ch. 2, part 4.

Inheritance and estate taxes, Title 72, ch. 16.

CHAPTER 4

UPC — FOREIGN PERSONAL REPRESENTATIVES AND ANCILLARY ADMINISTRATION

Part 1 — General Provisions

72-4-101. Definitions.

Part 2 — Jurisdiction Over Foreign Personal Representatives

72-4-201. Jurisdiction by act of foreign personal representative.
72-4-202. Jurisdiction by act of decedent.
72-4-203. Service on foreign personal representative.

Part 3 — Powers and Duties of Foreign Personal Representative

72-4-301. Renumbered 72-4-310.
72-4-302. Renumbered 72-4-311.
72-4-303. Filing of letters, bond, inventory, and affidavit — copy to department of revenue.
72-4-304. Determination of inheritance tax — certificate of department of revenue showing tax paid, waived, or bond posted.
72-4-305. Right to inspect estate assets for inventory.
72-4-306. Payment of debt and delivery of property to foreign representative.
72-4-307. Payment or delivery discharges debtor or possessor.
72-4-308. Payment or delivery to foreign representative prohibited by resident creditor notice.
72-4-309. Proof of authority — bond.
72-4-310. Powers of foreign representative generally.
72-4-311. Effect of local administration on foreign representative, third persons, and local representative.

Part 4 — Ancillary Administration

72-4-401. Ancillary administration — provisions governing.
72-4-402. Adjudication in other jurisdiction binding on local representative.

Part 1
General Provisions

72-4-101. Definitions. In this chapter, the following definitions apply:

(1) "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in chapter 3.

(2) "Local personal representative" includes any personal representative appointed in this state pursuant to appointment proceedings described in chapter 3 and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to 72-4-310.

(3) "Resident creditor" means a person domiciled in or doing business in this state who is or could be a claimant against an estate of a nonresident decedent.

History: En. 91A-4-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-101.

Part 2

Jurisdiction Over Foreign Personal Representatives

72-4-201. Jurisdiction by act of foreign personal representative. (1) A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by:

(a) filing authenticated copies of his appointment as provided in 72-4-309;

(b) receiving payment of money or taking delivery of personal property under 72-4-306; or

(c) doing any act as a personal representative in this state that would have given the state jurisdiction over him as an individual.

(2) Jurisdiction under subsection (1)(b) is limited to the money or value of personal property collected.

History: En. 91A-4-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-301; amd. Sec. 12, Ch. 52, L. 1981.

72-4-202. Jurisdiction by act of decedent. In addition to jurisdiction conferred by 72-4-201, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

History: En. 91A-4-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-302.

72-4-203. Service on foreign personal representative. (1) Service of process may be made upon the foreign personal representative by registered or certified mail addressed to his last reasonably ascertainable address requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), he shall be allowed at least 30 days within which to appear or respond.

History: En. 91A-4-303 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-303.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Part 3

Powers and Duties of Foreign Personal Representative

72-4-301. Renumbered 72-4-310. Sec. 17, Ch. 52, L. 1981.

72-4-302. Renumbered 72-4-311. Sec. 17, Ch. 52, L. 1981.

72-4-303. Filing of letters, bond, inventory, and affidavit — copy to department of revenue. (1) The domiciliary foreign personal representative of the estate of a nonresident decedent, who wishes to receive payment and delivery as described in 72-4-306 or to exercise the powers over assets described in 72-4-310, shall file in duplicate with a district court in this state in a county in which property belonging to the decedent is located authenticated copies of his appointment and of any official bond he has given, an inventory and appraisal of the property of the nonresident decedent located in this state, which inventory shall contain the information prescribed in 72-3-607, and an affidavit stating:

(a) the date of death of the nonresident decedent; and

(b) that no local administration or application or petition therefor is pending in this state.

(2) Upon receiving the information required by subsection (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying him as having registered with the district court and stating the name and date of death of the decedent.

(3) The clerk shall also immediately forward a copy of the appointment, affidavit, and inventory and appraisal required by subsection (1) to the department of revenue.

History: **En. 91A-4-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-201.**

Cross-References

District Court Clerk fees, 25-1-201.

Suretyship, Title 28, ch. 11, part 4.

72-4-304. Determination of inheritance tax — certificate of department of revenue showing tax paid, waived, or bond posted. (1) The department of revenue shall determine what inheritance tax, if any, is owing on the property of the nonresident decedent located in this state and shall send notice of the tax owing to the domiciliary foreign personal representative and to the clerk of court.

(2) Upon payment of the inheritance tax due or if no tax is owing, the department of revenue shall issue a certificate to the domiciliary foreign personal representative indicating that inheritance taxes either are not owing or have been paid and shall send a copy of the certificate to the clerk of court.

(3) The department may issue an order waiving inheritance taxes on a particular item of property under such terms and circumstances as the department shall determine.

(4) Upon the posting by the domiciliary foreign personal representative of satisfactory bond, the department may issue a certificate indicating that bond has been posted sufficient to secure any inheritance tax due on the in-state property of the nonresident decedent. This certificate may be issued at any time after the filing of the inventory with the clerk of court.

History: **En. 91A-4-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-202.**

Cross-References

Inheritance and estate taxes, Title 72, ch. 16.

72-4-305. Right to inspect estate assets for inventory. Any person holding any property of a nonresident decedent, including any instrument evidencing a debt, obligation, stock, or chose in action, shall permit the domiciliary foreign personal representative of the nonresident decedent to inspect and appraise the property for purposes of completing the inventory and appraisal called for in 72-4-303(1) upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:

(1) the date of death of the nonresident decedent;

(2) that no local administration or application or petition therefor is pending in this state; and

(3) that the domiciliary foreign personal representative is entitled to make such inspection and appraisal.

History: En. 91A-4-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-203.

72-4-306. Payment of debt and delivery of property to foreign representative. At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock, or chose in action to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative, stating:

(1) the date of the death of the nonresident decedent;

(2) that no local administration, or application or petition therefor, is pending in this state;

(3) that the domiciliary foreign personal representative is entitled to payment or delivery.

History: En. 91A-4-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-204; amd. Sec. 14, Ch. 52, L. 1981.

72-4-307. Payment or delivery discharges debtor or possessor. Payment or delivery made in good faith on the basis of the certificate of the clerk of court and the certificate of the department of revenue releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

History: En. 91A-4-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-205.

72-4-308. Payment or delivery to foreign representative prohibited by resident creditor notice. Payment or delivery under 72-4-306 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid or the property delivered to the domiciliary foreign personal representative.

History: En. 91A-4-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-206; amd. Sec. 15, Ch. 52, L. 1981.

72-4-309. Proof of authority — bond. If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.

History: En. Sec. 16, Ch. 52, L. 1981.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-4-310. Powers of foreign representative generally. A domiciliary foreign personal representative who has complied with 72-4-309 may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state, subject to any conditions imposed upon nonresident parties generally.

History: En. 91A-4-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-207; amd. Sec. 13, Ch. 52, L. 1981; MCA 1979, 72-4-301; redes. 72-4-310 by Sec. 17, Ch. 52, L. 1981.

72-4-311. Effect of local administration on foreign representative, third persons, and local representative. (1) The power of a domiciliary foreign personal representative under 72-4-306 or 72-4-310 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under 72-4-310, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate.

(2) No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for or grant of local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

History: En. 91A-4-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-208; MCA 1979, 72-4-302; redes. 72-4-311 by Sec. 17, Ch. 52, L. 1981.

Part 4

Ancillary Administration

72-4-401. Ancillary administration — provisions governing. In respect to a nonresident decedent, the provisions of this code govern:

(1) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative and any other order concerning the estate; and

(2) the status, powers, duties, and liabilities of any local personal representative and the rights of claimants, purchasers, distributees, and others in regard to a local administration.

History: En. 91A-4-209 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-209.

72-4-402. Adjudication in other jurisdiction binding on local representative. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

History: En. 91A-4-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-401.

Cross-References

Effect of judicial record of another state, 26-3-203.

CHAPTER 5

UPC — PERSONS UNDER DISABILITY GUARDIANSHIP AND CONSERVATORSHIP

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72-5-102. Jurisdiction of subject matter — consolidation of proceedings.
72-5-103. Delegation of powers by parent or guardian.
72-5-104. Informal discharge of duty to pay or deliver property to minor.

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72-5-202. Consent to jurisdiction by acceptance of appointment.
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72-5-320. Purposes for establishment of limited guardianship.
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Part 5 — Powers of Attorney

72-5-501. When power of attorney not affected by disability.
72-5-502. Power of attorney not revoked until notice.

Chapter Cross-References

Costs of committing a patient already voluntarily admitted — transportation costs for voluntary admission, 53-21-113.

Part 1

General Provisions

72-5-101. Definitions. Unless otherwise apparent from the context, in this code, the following definitions apply:

(1) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(2) "Protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made.

(3) "Protective proceeding" means a proceeding under the provisions of 72-5-409 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.

(4) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

History: En. 91A-5-101 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 514, L. 1977; R.C.M. 1947, 91A-5-101; amd. Sec. 1, Ch. 382, L. 1991.

72-5-102. Jurisdiction of subject matter — consolidation of proceedings. (1) The court has jurisdiction over protective proceedings and guardianship proceedings.

(2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

History: En. 91A-5-102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-102.

72-5-103. Delegation of powers by parent or guardian. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

History: En. 91A-5-104 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-104.

Cross-References

Judicial approval of marriage of minor, 40-1-213.

Consent required for adoption, 40-8-111.

Powers of attorney, Title 72, ch. 5, part 5.

72-5-104. Informal discharge of duty to pay or deliver property to minor. (1) Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding $5,000 per annum, by paying or delivering the money or property to:

(a) the minor, if he has attained the age of 18 years or is married;

(b) any person having the care and custody of the minor with whom the minor resides;

(c) a guardian of the minor; or

(d) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

(2) This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending.

(3) The persons, other than the minor or any financial institution under (1)(d) above, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor, and any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

History: En. 91A-5-103 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-103.

Part 2

Guardians of Minors

Part Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-201. Status of guardian of minor — how acquired generally — letters to indicate means of appointment. (1) A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court.

(2) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

(3) The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

History: En. 91A-5-201, 91A-5-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-201, 91A-5-208(part).

72-5-202. Consent to jurisdiction by acceptance of appointment. (1) By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

History: En. 91A-5-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-208(part).

72-5-203 through 72-5-210 reserved.

72-5-211. Testamentary appointment of guardian of minor — when effective — priorities — notice of appointment. (1) The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under 72-5-213, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated if before acceptance both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority.

(2) Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care or to his nearest adult relations.

History: **En. 91A-5-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-202(part).**

72-5-212. Recognition of appointment of guardian by foreign will. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile.

History: **En. 91A-5-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-202(part).**

Cross-References

Effect of judicial record of another state, 26-3-203.

72-5-213. Objection by minor fourteen or older to testamentary appointment. A minor of 14 or more years may prevent an appointment of his testamentary guardian from becoming effective or may cause a previously accepted appointment to terminate by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person.

History: **En. 91A-5-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-203.**

72-5-214 through 72-5-220 reserved.

72-5-221. Venue for proceedings for court appointment of guardian of minor. The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

History: **En. 91A-5-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-205.**

72-5-222. Court appointment of guardian of minor — when allowed — priority of testamentary appointment. (1) The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order.

(2) A guardian appointed by will as provided in 72-5-211 and 72-5-212 whose appointment has not been prevented or nullified under 72-5-213 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

History: **En. 91A-5-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-204.**

72-5-223. Guardian of minor by court appointment — qualifications — nominee of minor preferred. The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor if the minor is 14 years of age or older unless the court finds the appointment contrary to the best interests of the minor.

History: **En. 91A-5-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-206.**

Cross-References

Best interest of child, 40-4-212.

72-5-224. Temporary guardian of minor. If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than 6 months.

History: En. 91A-5-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-207(3).

72-5-225. Procedure for court appointment of guardian of minor — notice — hearing — representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if he is 14 or more years of age;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose.

History: En. 91A-5-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-207(1), (2), (4); amd. Sec. 2, Ch. 93, L. 1979.

72-5-226 through 72-5-230 reserved.

72-5-231. Powers and duties of guardian of minor. A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular and without qualifying the foregoing, a guardian has the following powers and duties:

(1) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) He may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship. He also may receive money or property of the ward paid or delivered by virtue of 72-5-104. Any sums so received shall be applied to the ward's current needs for support, care, and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator. Sums so received by the

guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his ward.

(4) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.

History: En. 91A-5-209 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-209.

Cross-References

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

72-5-232. Proceedings subsequent to appointment — concurrent jurisdiction of court where ward resides — venue. (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian or in which acceptance of a testamentary appointment was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court in this or another state and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

History: En. 91A-5-211 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-211.

72-5-233. Termination of appointment — how effected — certain liabilities and obligations not affected. A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination does not affect his liability for prior acts or his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

History: En. 91A-5-210 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-210.

72-5-234. Procedure for resignation or removal — petition, notice, and hearing — representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

History: En. 91A-5-212 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-212.

Part 3

Guardians of Incapacitated Persons

72-5-301. Consent to jurisdiction by acceptance of appointment. (1) By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

History: En. 91A-5-305 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-305.

72-5-302. Testamentary appointment of guardian for incapacitated person — when effective — priorities. (1) The parent of an unmarried incapacitated person may appoint by will or other writing signed by the parent and attested by at least two witnesses a guardian of the incapacitated person. If both parents are dead or the surviving parent is adjudged incapacitated, a parental appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the incapacitated person and to the person having care of the person or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by 72-5-304. If both parents are dead, an effective appointment by the parent who died later has priority.

(2) The spouse of a married incapacitated person may appoint by will or other writing signed by the spouse and attested by at least two witnesses a guardian of the incapacitated person. The appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the incapacitated person and to the person having care of the incapacitated person or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated or, in the case of nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice must state that the appointment may be terminated by filing a written objection in

the court, as provided by 72-5-304. An effective appointment by a spouse has priority over an appointment by a parent.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-301(1), (2); amd. Sec. 18, Ch. 582, L. 1989.

72-5-303. Recognition of appointment of guardian by foreign will. An appointment effected by filing the guardian's acceptance under a will probated in the state of the decedent's domicile is effective in this state.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-301(3); amd. Sec. 19, Ch. 582, L. 1989.

Cross-References

Effect of judicial record of another state, 26-3-203.

72-5-304. Objection by alleged incapacitated person to testamentary appointment. Upon the filing in the court in which the will was probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present, of written objection to the appointment by the incapacitated person for whom a parental or spousal appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or any other suitable person upon an adjudication of incapacity in proceedings under 72-5-305 through 72-5-325.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-301(4); amd. Sec. 20, Ch. 582, L. 1989.

72-5-305. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Full guardian" means a guardian who possesses all the legal duties and powers enumerated in 72-5-321.

(2) "Guardian" includes a full guardian and a limited guardian.

(3) "Limited guardian" means a guardian who possesses fewer than all of the legal duties and powers of a full guardian and whose rights, powers, and duties have been specifically enumerated by the court.

History: En. Sec. 1, Ch. 344, L. 1981.

72-5-306. Purpose and basis for guardianship. Guardianship for an incapacitated person may be used only as is necessary to promote and protect the well-being of the person. The guardianship must be designed to encourage the development of maximum self-reliance and independence in the person and may be ordered only to the extent that the person's actual mental and physical limitations require it. An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the court.

History: En. Sec. 2, Ch. 344, L. 1981.

72-5-307 through 72-5-310 reserved.

72-5-311. Venue for proceedings for court appointment of guardian. The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

History: En. 91A-5-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-302.

72-5-312. Who may be guardian — priorities. (1) Any competent person or a suitable institution, association, or nonprofit corporation or any of its members may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person, association, or private nonprofit corporation nominated by the incapacitated person, if the court specifically finds that at the time of the nomination the incapacitated person had the capacity to make a reasonably intelligent choice;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom he has resided for more than 6 months prior to the filing of the petition;

(f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the incapacitated person;

(g) a private association or nonprofit corporation with a guardianship program for incapacitated persons, a member of such private association or nonprofit corporation approved by the association or corporation to act as a guardian for the incapacitated person, or a person included on an official list of such association or organization as willing and suitable to act as guardian of incapacitated persons;

(h) a person nominated by the person who is caring for him or paying benefits to him.

(3) The priorities established in subsection (2) are not binding, and the court shall select the person, association, or nonprofit corporation that is best qualified and willing to serve.

(4) Except as provided in subsection (5), the court may not appoint a person, institution, association, or nonprofit corporation to be the guardian of an incapacitated person if the person, institution, association, or nonprofit corporation:

(a) provides or is likely to provide during the guardianship substantial services to the incapacitated person in the professional or business capacity other than in the capacity of guardian;

(b) is or is likely to become during the guardianship period a creditor of the incapacitated person, other than in the capacity of guardian;

(c) has or is likely to have during the guardianship period interests that may conflict with those of the incapacitated person; or

(d) is employed by a person, institution, association, or nonprofit corporation who or which would be disqualified under subsections (4)(a) through (4)(c).

(5) If the court determines that there is no qualified person willing and able to serve as guardian, the court may appoint an agency of the state or federal government that is authorized or required by statute to provide

services to the person or to persons suffering from the kind of disability from which the incapacitated person is suffering or a designee of the agency, notwithstanding the provisions of subsection (4). Whenever an agency is appointed guardian, the court may also appoint a limited guardian to represent a specified interest of the incapacitated person. Whenever a limited guardian is appointed pursuant to this subsection, the specified interest of the incapacitated person is the sole responsibility of the limited guardian and is removed from the responsibility of the agency.

History: En. 91A-5-311 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-311; amd. Sec. 3, Ch. 344, L. 1981.

72-5-313. Visitor in guardianship proceedings defined. A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, social work, medical care, mental health care, pastoral care, education, or rehabilitation and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

History: En. 91A-5-308 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-308; amd. Sec. 4, Ch. 344, L. 1981.

72-5-314. Notices in guardianship proceedings. (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(a) the ward or the person alleged to be incapacitated and his spouse, parents, and adult children;

(b) any person who is serving as his guardian, conservator, or who has his care and custody; and

(c) in case no other person is notified under (a), at least one of his closest adult relatives, if any can be found.

(2) Notice shall be served personally on the alleged incapacitated person and his spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in 72-1-301. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.

History: En. 91A-5-309 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-309.

Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-315. Procedure for court appointment of guardian — hearing — examination — interview — procedural rights. (1) The incapacitated person or any person interested in his welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of his own choice or the court may, in the interest of justice, appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem.

(3) The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests.

History: En. 91A-5-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 222, L. 1977; amd. Sec. 2, Ch. 514, L. 1977; R.C.M. 1947, 91A-5-303; amd. Sec. 8, Ch. 344, L. 1981.

72-5-316. Findings — order of appointment. (1) If the court is satisfied that the person for whom a guardianship is sought is incapacitated and that judicial intervention in his personal freedom of action and decision is necessary to meet essential requirements for his physical health or safety, it may appoint a full guardian having the powers described in 72-5-321 or a limited guardian having the powers described in the order. If the court is satisfied that the allegedly incapacitated person could handle the essential requirements for physical health or safety if his financial resources were managed by another, it shall order that the petition be treated as a petition for a protective order under part 4 of this chapter and proceed accordingly. Alternatively, the court may dismiss the proceeding or enter any other appropriate order that is not inconsistent with the specific provisions of this part. In issuing its order the court shall make specific findings of fact.

(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and may, upon petition for a full guardianship, create a limited guardianship or conservatorship when the court determines that a limited guardianship or conservatorship is all that is required for the care and protection of the incapacitated person. The order shall specify whether a full or limited guardianship is being created. In the case of a limited guardianship, the order shall specify the particular powers and duties vested in the limited guardian and the period for which the limited guardianship is created.

(3) No incapacitated person may be limited in the exercise of any civil or political rights except those that are clearly inconsistent with the exercise of the powers granted to the guardian unless the court's order specifically provides for such limitations. The order shall state that all rights not specifically limited are retained by the incapacitated person.

History: En. 91A-5-304 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-304; amd. Sec. 9, Ch. 344, L. 1981.

72-5-317. Temporary guardians. (1) If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing.

(2) If an appointed guardian is not effectively performing his duties or if there is no appointed guardian and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed 6 months. The court may appoint either a full or a limited temporary guardian, depending on the needs and circumstances of the incapacitated person. The court may not invest a temporary guardian with more powers than are required by the circumstances necessitating the appointment. The order of appointment of a temporary guardian shall state whether a full or limited temporary guardianship is being created and, in the case of a limited temporary guardian, the specific powers and duties of the limited temporary guardian.

(3) In case there is no person available and willing to act as temporary guardian for an incapacitated person who is in need of a temporary guardian except a person or entity who is ineligible to act as guardian pursuant to the provisions of 72-5-312(4), the court may appoint as temporary guardian a person or entity who would otherwise be ineligible under that provision to act as guardian. This subsection does not permit the appointment of a person or entity who has an actual conflict of interest in regard to the purpose for which the temporary guardianship is sought. A temporary guardian who is otherwise ineligible shall serve until a person or entity who is not ineligible to serve as guardian and who is otherwise qualified to be guardian is appointed by the court to act as temporary guardian, but in no case may he serve for longer than 6 months.

(4) A temporary full guardian is entitled to the care and custody of the ward, and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary limited guardian is entitled to exercise such powers as are specifically granted to him in the order of appointment, and the power of any permanent guardian previously appointed by the court to exercise those powers is suspended so long as the temporary limited guardian has authority. The court by specific order may suspend all authority of the permanent guardian upon appointment of a temporary limited guardian. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of this code concerning guardians apply to temporary guardians.

History: En. 91A-5-310 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-310; amd. Sec. 10, Ch. 344, L. 1981.

72-5-318. Request for notice — interested person. (1) Any interested person who desires to be notified before any order is made in a guardianship proceeding may file with the clerk a request for notice upon payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the guardian, if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and his address or that of his attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the alleged incapacitated person is an interested person in guardianship proceedings.

History: En. Sec. 5, Ch. 344, L. 1981.

72-5-319. Contents of petition for appointment of guardian. (1) The petition for appointment of a guardian shall contain:

(a) the name, residence, and mailing address of the petitioner, his relationship to the alleged incapacitated person, and his interest in the matter;

(b) the name, residence, and mailing address of the alleged incapacitated person;

(c) the nature and degree of the alleged incapacity;

(d) if the petition in any way affects the management of the property of the alleged incapacitated person, the approximate value and description of his property, including any compensation, pension, insurance, or allowance to which he may be entitled;

(e) whether there is, in any state, a full guardian or limited guardian for the person or estate of the incapacitated person or a conservator of his property;

(f) the name, residence, and mailing address of the person whom the petitioner seeks to have appointed guardian;

(g) the names, residences, and nature of relationship, so far as is known or can reasonably be ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(h) the name and residence of the person or institution having the care and custody of the alleged incapacitated person;

(i) the reasons why the appointment of a guardian is sought and whether a limited guardianship or full guardianship is requested;

(j) the facts supporting the allegations of incapacity and the need for a guardian;

(k) the specific areas of protection and assistance requested and the limitation of rights requested to be included in the order of appointment;

(l) in the case of a petition for limited guardianship, the particular powers and areas of authority that the petition seeks to have vested in the limited guardian as provided in 72-5-320 and the term for which the limited guardianship is requested;

(m) in the case of a petition for full guardianship, the length of time the guardianship is expected to last.

(2) The petition may also include a request for temporary guardianship as provided in 72-5-317 if the petitioner believes that the requisites of that section are met and that the appointment of a temporary guardian, pending

the completion of guardianship proceedings, is necessary to protect the welfare of the alleged incapacitated person. The facts requiring appointment of a temporary guardian shall be stated with specificity.

History: En. Sec. 6, Ch. 344, L. 1981.

72-5-320. Purposes for establishment of limited guardianship. A petition seeking the establishment of a limited guardianship shall specify the particular powers that the limited guardian is proposed to exercise and the particular areas of protection and assistance required. The purposes for which a limited guardian may be appointed include:

(1) to care for and maintain the alleged incapacitated person;

(2) to assert and protect the rights and best interests of the alleged incapacitated person;

(3) to provide timely and informed consent to necessary medical procedures and procedures implemented in connection with habilitation and training programs;

(4) to assist in the acquisition of necessary training, habilitation, and education for the incapacitated person;

(5) to exercise any other powers, duties, or limitations in regard to the care of the incapacitated person or the management of his property that the petition shall explicitly specify and which may be no greater than the powers a full guardian can exercise.

History: En. Sec. 7, Ch. 344, L. 1981.

72-5-321. Powers and duties of guardian of incapacitated person. (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to his possession and control, as required by the court or by court rule.

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of his ward, he shall make provision for the care, comfort, and maintenance of his ward and whenever appropriate arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If no conservator for the estate of the ward has been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

(e) Unless waived by the court, a full guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the full guardian must account to the conservator for funds expended.

(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for his failure to file a timely report.

(4) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which he is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee such aspects of the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(5) No full guardian or limited guardian may involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is himself unwilling or unable to give informed consent to such commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.

History: En. 91A-5-312 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-312; amd. Sec. 11, Ch. 344, L. 1981; amd. Sec. 1, Ch. 401, L. 1983.

72-5-322. Petition of guardian for treatment of ward. (1) If a guardian believes his ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition by the guardian, grant an order for evaluation or treatment, provided that no such order shall forcibly detain the ward against his will for more than 72 hours.

(2) The ward is entitled to an appointment of counsel and a hearing along with all the other rights guaranteed seriously mentally ill persons under 53-21-114, 53-21-115, 53-21-119, and 53-21-120.

History: En. 91A-5-314 by Sec. 3, Ch. 514, L. 1977; R.C.M. 1947, 91A-5-314.

72-5-323. Proceedings subsequent to appointment — concurrent jurisdiction of court where ward resides — venue. (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian or in which acceptance of a testamentary appointment was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

History: En. 91A-5-313 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-313.

Cross-References

Best interest of child, 40-4-212.

72-5-324. Termination of appointment — how effected — certain liabilities and obligations not affected. (1) The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in 72-5-325. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(2) Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

History: En. 91A-5-306 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-306.

72-5-325. Petition for removal or resignation of guardian — termination of incapacity — appointment of successor guardian. (1) On petition of the ward or any person interested in the ward's welfare, the court, after hearing, may remove a guardian if in the best interests of the ward. On petition of the guardian, the court, after hearing, may accept a resignation.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding 6 months, during which a petition for an adjudication that the ward is no longer incapacitated may not be filed without special leave. Subject to that restriction, the ward or any person interested in the welfare of the ward may petition for an order that the ward is no longer incapacitated and for termination of the guardianship. A request for an order may also be made informally to the court, and any person who knowingly interferes with transmission of the request may be adjudged guilty of contempt of court.

(3) Upon removal, resignation, or death of the guardian or if the guardian is determined to be incapacitated, the court may appoint a successor guardian and make any other appropriate order. Before appointing a successor guardian or ordering that a ward's incapacity has terminated, the court shall follow

the same procedures to safeguard the rights of the ward that apply to a petition for appointment of a guardian.

History: En. 91A-5-307 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-307; amd. Sec. 21, Ch. 582, L. 1989.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Part 4

Protection of Property of Minors and Persons Under Disability

72-5-401. Original petition for appointment or protective order — who may petition. The person to be protected, any person who is interested in his estate, affairs, or welfare, including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

History: En. 91A-5-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-404(1).

72-5-402. Contents of petition. (1) The petition shall set forth to the extent known:

(a) the interest of the petitioner;

(b) the name, age, residence, and address of the person to be protected;

(c) the name and address of his guardian, if any;

(d) the name and address of his nearest relative known to the petitioner;

(e) a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which he is entitled; and

(f) the reason why appointment of a conservator or other protective order is necessary.

(2) If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

History: En. 91A-5-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-404(2).

72-5-403. Notice — waiver. (1) On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents must be served personally with notice of the proceeding at least 14 days before the date of hearing if they can be found within the state, or if they cannot be found within the state, they must be given notice in accordance with 72-1-301. Waiver by the person to be protected is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(2) Notice of a petition for appointment of a conservator or other initial protective order and of any subsequent hearing must be given to any person who has filed a request for notice under 72-5-404 and to interested persons and other persons as the court may direct. Except as otherwise provided in (1), notice shall be given in accordance with 72-1-301.

History: En. 91A-5-405 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-405.

72-5-404. Request for notice — interested person. (1) Any interested person who desires to be notified before any order is made in a protective proceeding may file with the clerk a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and his address or that of his attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

History: En. 91A-5-406 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-406.

72-5-405. Exclusive and concurrent jurisdiction of particular court after petition and notice. After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended, or distributed to or for the use of the protected person or any of his dependents;

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

History: En. 91A-5-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-402.

72-5-406. Consent to jurisdiction by acceptance of appointment as conservator. (1) By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person.

(2) Notice of any proceeding shall be delivered to the conservator or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

History: En. 91A-5-413 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-413.

72-5-407. Venue. Venue for proceedings under this part is:

(1) in the place in this state where the person to be protected resides, whether or not a guardian has been appointed in another place; or

(2) if the person to be protected does not reside in this state, in any place where he has property.

History: En. 91A-5-403 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-403.

72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

History: En. 91A-5-407 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-407; amd. Sec. 1, Ch. 208, L. 1985; amd. Sec. 4, Ch. 362, L. 1985.

72-5-409. Cause for appointment of conservator or issuance of protective order. Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that:

(a) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

(b) the person has property which will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

History: En. 91A-5-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-401.

72-5-410. Who may be appointed conservator — priorities. (1) The court may appoint an individual or a corporation with general power to serve as trustee as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(c) the spouse of the protected person;

(d) an adult child of the protected person;

(e) a parent of the protected person or a person nominated by the will of a deceased parent;

(f) any relative of the protected person with whom he has resided for more than 6 months prior to the filing of the petition;

(g) a person nominated by the person who is caring for him or paying benefits to him;

(h) a conservator corporation organized under Title 35, chapter 2;

(i) the public administrator.

(2) A person in priorities (a), (c), (d), (e), or (f) may nominate in writing a person to serve in his stead.

(3) With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

History: En. 91A-5-410 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-410; amd. Sec. 5, Ch. 362, L. 1985.

72-5-411. Bond — court may require — amount. (1) The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law with sureties as it shall specify.

(2) Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus 1 year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization.

(3) The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

History: En. 91A-5-411 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-411.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-5-412. Terms and requirements of bond. (1) The following requirements and provisions apply to any bond required under 72-5-411:

(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other.

(b) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(c) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator.

(d) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: En. 91A-5-412 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-412.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-5-413. Petitions for orders subsequent to appointment — interested persons. (1) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

(a) requiring bond or security or additional bond or security or reducing bond;

(b) requiring an accounting for the administration of the trust;

(c) directing distribution;

(d) removing the conservator and appointing a temporary or successor conservator; or

(e) granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

(3) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

(4) For purposes of this section, any person, institution, or agency which is furnishing or supplying any money for support or care of a person for whom a conservator has been appointed is a person interested in the welfare of such protected person.

History: En. 91A-5-416 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-416.

72-5-414. Resignation or removal of conservator for cause — successor conservator. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor.

History: En. 91A-5-415 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-415; amd. Sec. 5, Ch. 6, L. 1979.

72-5-415. Public administrator as conservator when no other appropriate person. (1) Whenever a professional person, as defined in 53-21-102, has reason to believe that any person is in need of the appointment of a conservator for the effective management of his property or affairs under this part and that the person has no relative, friend, or other appropriate person who is able and willing to serve as a conservator for the person, the professional person must notify the public administrator.

(2) Whenever the public administrator is notified under subsection (1) of the need for the appointment of a conservator and reasonable cause exists, he must file a petition for appointment of the public administrator as conservator of the person.

History: En. Secs. 1, 2, Ch. 362, L. 1985.

Cross-References

Office of Public Administrator, 7-4-3004; Title 72, ch. 15.

72-5-416 through 72-5-420 reserved.

72-5-421. Powers of court as to property and affairs of protected persons generally. The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family, and members of his household.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include but are not limited to power to:

(a) make gifts;

(b) convey or release his contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(c) exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment;

(d) enter into contracts;

(e) create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life;

(f) exercise options of the disabled person to purchase securities or other property;

(g) exercise his rights to elect options and change beneficiaries under insurance and annuity policies and surrender the policies for their cash value;

(h) exercise his right to an elective share in the estate of his deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to

renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person and that he either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section, determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person.

History: En. 91A-5-408 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-408.

Cross-References

Montana Health Facility Authority bonds — legal investment, 90-7-113.

72-5-422. Power of court to authorize particular protective arrangements or transactions without appointing conservator. (1) If it is established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include but are not limited to:

(a) payment, delivery, deposit, or retention of funds or property;

(b) sale, mortgage, lease, or other transfer of property;

(c) entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or

(d) addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who, upon appointment, has the authority conferred by the order and serves until discharged by order after report to the court of all matters done pursuant to the order of appointment.

History: En. 91A-5-409 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-409; amd. Sec. 6, Ch. 6, L. 1979.

Cross-References

Montana Health Facility Authority bonds — legal investment, 90-7-113.

72-5-423. Fiduciary duty of conservator. In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees.

History: En. 91A-5-417 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-417.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

72-5-424. Inventory and records. (1) Within 90 days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person, together with his oath or affirmation that it is complete and accurate so far as he is informed. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of 14 years, and has sufficient mental capacity to understand these matters and to any parent or guardian with whom the protected person resides.

(2) The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.

History: En. 91A-5-418 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-418.

72-5-425. Title by appointment as conservator — appointment not transfer for certain purposes. (1) The appointment of a conservator vests in him title as trustee to all property of the protected person presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys-in-fact.

(2) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

History: En. 91A-5-420 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-420; amd. Sec. 7, Ch. 6, L. 1979.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

72-5-426. Letters as evidence of transfer of assets — recording. (1) Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person or his successors.

(2) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give record notice of title as between the conservator and the protected person.

History: En. 91A-5-421 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-421.

72-5-427. Powers of conservator in administration. (1) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of 18 years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in 72-5-231 until the minor attains the age of 18 or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by part 2.

(2) A conservator has power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation to:

(a) collect, hold, and retain assets of the estate, including land in another state, until in his judgment disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(b) receive additions to the estate;

(c) continue or participate in the operation of any business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator in any fiduciary capacity holds an undivided interest;

(e) invest and reinvest estate assets in accordance with subsection (2);

(f) deposit estate funds in a bank including a bank operated by the conservator;

(g) acquire or dispose of an estate asset, including land in another state, for cash or on credit at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;

(j) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) grant an option involving disposition of an estate asset; take an option for the acquisition of any asset;

(m) vote a security in person or by general or limited proxy;

(n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(q) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(r) borrow money to be repaid from estate assets or otherwise; advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made;

(s) pay or contest any claim; settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;

(u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion in mineral or timber properties;

(v) pay any sum distributable to a protected person or a dependent of the person who is a minor or incompetent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or, if none, to a relative or other person with custody of his person;

(w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist him in the performance of his administrative duties; act upon their recommendation without independent investigation; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(y) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

History: En. 91A-5-424 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-424.

Cross-References

Trust administration, Title 72, ch. 34.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

72-5-428. Distributive powers and duties of conservator generally. (1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the following principles:

(a) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to:

(i) the size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him;

(ii) the accustomed standard of living of the protected person and members of his household;

(iii) other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support.

(d) Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures which the conservator might have made or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make in amounts which do not exceed in total for any year 20% of the income from the estate.

History: En. 91A-5-425 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-425(1), (2).

72-5-429. Distribution upon attainment of majority, termination of disability, or death of protected person. (1) When a minor who has not been adjudged disabled under 72-5-409(2) attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(2) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(3) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appoint-

ment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under 72-3-106 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in 72-3-222, 72-3-223(1), and parts 5 through 10 of chapter 3, except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

History: En. 91A-5-425 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-425(3) thru (5).

72-5-430. Enlargement or limitation of powers of conservator by court. (1) Subject to the restrictions in 72-5-421(4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by 72-5-427, 72-5-428, and 72-5-429, any power which the court itself could exercise under subsections (2) and (3) of 72-5-421.

(2) The court may, at the time of appointment or later, limit the powers of a conservator conferred by the court and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by 72-5-427, 72-5-428, or 72-5-429, the limitation shall be endorsed upon his letters of appointment.

History: En. 91A-5-426 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-426.

72-5-431. Preservation of estate plan — right to inspect will. In investing the estate and in selecting assets of the estate for distribution under 72-5-428, in utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

History: En. 91A-5-427 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-427.

72-5-432. Compensation and expenses. If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

History: En. 91A-5-414 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-414.

72-5-433. Claims against protected person — presentment, allowance, and payment — priorities. (1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.

(b) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

(2) A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator or the filing of the claim with the court. The presentation of a claim tolls any statute of limitation relating to the claim until 30 days after its disallowance.

(3) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.

History: En. 91A-5-428 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-428.

72-5-434. Transaction involving conflict of interest — voidable — exceptions. Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

History: En. 91A-5-422 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-422.

72-5-435. Persons dealing with conservator — protection. (1) A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in 72-5-421 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in 72-5-430 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator.

(2) The protection expressed in this section extends to any procedural irregularity or jurisdictional defect occurring in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or laws simplifying transfers of securities by fiduciaries.

(3) The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

History: En. 91A-5-423 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-423; amd. Sec. 23, Ch. 582, L. 1989.

72-5-436. Claims arising during conservatorship — individual liability of conservator. (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a conservator in his fiduciary capacity on obligations arising from ownership or control of the estate or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding or action.

History: En. 91A-5-429 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-429.

72-5-437. Termination of conservatorship. The protected person, his personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors, subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected persons or his successors to evidence the transfer.

History: En. 91A-5-430 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-430.

72-5-438. Accounts — final and intermediate. (1) Each conservator shall account to the court for administration of the trust not less than annually, unless the court directs otherwise, upon resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator shall account to the court or to the formerly protected person or the successors of that person.

(2) Subject to appeal or vacation within the time permitted, an order, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered in connection with the hearing; and an order, following notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator

to the protected person or the protected person's successors relating to the conservatorship.

(3) In connection with any account, the court may require a conservator to submit to a physical check of the estate, to be made in any manner the court specifies.

History: **En. 91A-5-419 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-419; amd. Sec. 2, Ch. 401, L. 1983; amd. Sec. 22, Ch. 582, L. 1989.**

72-5-439. Payment of debt and delivery of property to foreign conservator without local proceedings. (1) Any person indebted to a protected person or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state or residence of the protected person upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

(a) that no protective proceeding relating to the protected person is pending in this state; and

(b) that the foreign conservator is entitled to payment or to receive delivery.

(2) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

History: **En. 91A-5-431 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-431.**

Part 5

Powers of Attorney

Part Cross-References

Agency, Title 28, ch. 10.

72-5-501. When power of attorney not affected by disability. (1) A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact or agent in writing and the writing contains the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. All acts done by the attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were alive, competent, and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

(2) If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, is accountable to the conservator as well as the principal. The conservator has the same power to revoke or amend the power of attorney that the principal would have had

if he were not disabled or incapacitated. A principal may nominate, by a durable power of attorney, the conservator of his estate or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are later commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

History: En. 91A-5-501 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-501; amd. Sec. 1, Ch. 283, L. 1985; amd. Sec. 24, Ch. 582, L. 1989.

72-5-502. Power of attorney not revoked until notice. (1) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the successors in interest of the principal.

(2) The disability or incapacity of a principal who has previously executed a power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.

(3) As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney-in-fact or agent stating that he did not have, at the time of exercise of the power, actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(4) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

History: En. 91A-5-502 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-502; amd. Sec. 2, Ch. 283, L. 1985.

CHAPTER 6

NONPROBATE TRANSFERS ON DEATH

Part 1 — Provisions Relating to Effect of Death

72-6-101. Renumbered 72-9-101 by Code Commissioner, 1993.
72-6-102. Renumbered 72-9-102 by Code Commissioner, 1993.
72-6-103. Renumbered 72-9-103 by Code Commissioner, 1993.
72-6-104 through 72-6-106 reserved.
72-6-107 through 72-6-110. Renumbered by Code Commissioner, 1993.
72-6-111. Nonprobate transfers on death.
72-6-112 and 72-6-113 reserved.
72-6-114. Renumbered 72-9-114 by Code Commissioner, 1993.
72-6-115. Renumbered 72-9-115 by Code Commissioner, 1993.
72-6-116. Renumbered 72-9-116 by Code Commissioner, 1993.

72-6-117 through 72-6-119 reserved.
72-6-120. Renumbered 72-9-120 by Code Commissioner, 1993.

Part 2 — Multiple-Person Accounts

72-6-201. Definitions.
72-6-202. Limitation on scope of part.
72-6-203. Types of account — existing accounts.
72-6-204. Forms.
72-6-205. Designation of agent.
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72-6-211. Ownership during lifetime.
72-6-212. Rights at death.
72-6-213. Alteration of rights.
72-6-214. Accounts and transfers nontestamentary.
72-6-215. Rights of creditors and others.
72-6-216. Community property and tenancy by entireties.
72-6-217 through 72-6-220 reserved.
72-6-221. Authority of financial institution.
72-6-222. Payment on multiple-party account.
72-6-223. Payment on POD designation.
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72-6-225. Payment to minor.
72-6-226. Discharge.
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Part 3 — Uniform TOD Security Registration Act

72-6-301. Definitions.
72-6-302. Registration in beneficiary form — sole or joint tenancy ownership.
72-6-303. Registration in beneficiary form — applicable law.
72-6-304. Origination of registration in beneficiary form.
72-6-305. Form of registration in beneficiary form.
72-6-306. Effect of registration in beneficiary form.
72-6-307. Ownership on death of owner.
72-6-308. Protection of registering entity.
72-6-309. Nontestamentary transfer on death.
72-6-310. Terms, conditions, and forms for registration.
72-6-311. Application of part.

Part 1

Provisions Relating to Effect of Death

72-6-101. Renumbered 72-9-101 by Code Commissioner, 1993.

72-6-102. Renumbered 72-9-102 by Code Commissioner, 1993.

72-6-103. Renumbered 72-9-103 by Code Commissioner, 1993.

72-6-104 through 72-6-106 reserved.

72-6-107 through 72-6-110. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-6-107. Renumbered 72-9-107.
72-6-108. Renumbered 72-9-108.
72-6-109. Renumbered 72-9-109.
72-6-110. Renumbered 72-9-110.

72-6-111. Nonprobate transfers on death. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

(b) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.

(2) This section does not limit rights of creditors under other laws of this state.

History: En. Sec. 83, Ch. 494, L. 1993.

72-6-112 and 72-6-113 reserved.

72-6-114. Renumbered 72-9-114 by Code Commissioner, 1993.

72-6-115. Renumbered 72-9-115 by Code Commissioner, 1993.

72-6-116. Renumbered 72-9-116 by Code Commissioner, 1993.

72-6-117 through 72-6-119 reserved.

72-6-120. Renumbered 72-9-120 by Code Commissioner, 1993.

Part 2

Multiple-Person Accounts

72-6-201. Definitions. In this part, the following definitions apply:

(1) "Account" means a contract of deposit between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit, and share account.

(2) "Agent" means a person authorized to make account transactions for a party.

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) "Multiple-party account" means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(6) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party or a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.

(8) "POD designation" means the designation of:

(a) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or

(b) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(9) "Receive", as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established or, if the terms of the account require notice at a particular place, in the place required.

(10) "Request" means a request for payment that complies with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; however, for purposes of this part, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(11) "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(12) "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

History: En. Sec. 84, Ch. 494, L. 1993.

72-6-202. Limitation on scope of part. This part does not apply to:

(1) an account established for a partnership, joint venture, or other organization for a business purpose;

(2) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or

(3) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

History: En. Sec. 85, Ch. 494, L. 1993.

72-6-203. Types of account — existing accounts. (1) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to 72-6-212(3), either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(2) An account established before, on, or after October 1, 1993, whether in the form prescribed in 72-6-204 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship and with or without a POD designation or an agency designation, within the meaning of this part, and is governed by this part.

History: En. Sec. 86, Ch. 494, L. 1993.

72-6-204. Forms. (1) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this part applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

. . . .

OWNERSHIP [Select One and Initial]:

. . . . SINGLE-PARTY ACCOUNT

. . . . MULTIPLE-PARTY ACCOUNT

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent. However, any one party may withdraw the entire amount on deposit in the account. Further, any one party may change the type of account.

RIGHTS AT DEATH [Select One and Initial]:

. . . . SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

. . . . SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

. . . .

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

. . . . MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties.

. . . . MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

. . . .

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

. . . . MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.

[To Add Agency Designation to Account, Name One or More Agents]:

. . . .

[Select One And Initial]:

. . . . AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

. . . . AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

(2) A contract of deposit that does not contain provisions in substantially the form provided in subsection (1) is governed by the provisions of this part applicable to the type of account that most nearly conforms to the depositor's intent.

History: En. Sec. 87, Ch. 494, L. 1993.

72-6-205. Designation of agent. (1) By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

(2) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

(3) Death of the sole party or last-surviving party terminates the authority of an agent.

History: En. Sec. 88, Ch. 494, L. 1993.

72-6-206. Applicability of beneficial ownership provisions. The provisions of 72-6-211 through 72-6-216 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors and do not apply to the right of those persons to payment as determined by the terms of the account. Sections 72-6-221 through 72-6-227 govern the liability and setoff rights of financial institutions that make payments pursuant to it.

History: En. Sec. 89, Ch. 494, L. 1993.

72-6-207 through 72-6-210 reserved.

72-6-211. Ownership during lifetime. (1) In this section, "net contribution" of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party that have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

(2) During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

(3) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(4) An agent in an account with an agency designation has no beneficial right to sums on deposit.

History: En. Sec. 90, Ch. 494, L. 1993.

72-6-212. Rights at death. (1) Except as otherwise provided in this part, on the death of a party, sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under 72-6-211 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under 72-6-211 belongs to the surviving parties in equal shares and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under 72-6-211 and the right of survivorship continues between the surviving parties.

(2) In an account with a POD designation:

(a) on the death of one of two or more parties, the rights in sums on deposit are governed by subsection (1);

(b) on the death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares and there is no right of survivorship in the event of the death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last-surviving party.

(3) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by the death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under 72-6-211 is transferred as part of the decedent's estate. A POD desig-

nation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(4) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

History: En. Sec. 91, Ch. 494, L. 1993.

72-6-213. Alteration of rights. (1) Rights at death under 72-6-212 are determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(2) A right of survivorship arising from the express terms of the account, from 72-6-212, or from a POD designation may not be altered by will.

History: En. Sec. 92, Ch. 494, L. 1993.

72-6-214. Accounts and transfers nontestamentary. Except as provided in Title 72, chapter 2, part 2, or as a consequence of and to the extent directed by 72-6-215, a transfer resulting from the application of 72-6-212 is effective by reason of the terms of the account involved and this part and is not testamentary or subject to Title 72, chapters 1 through 5.

History: En. Sec. 93, Ch. 494, L. 1993.

72-6-215. Rights of creditors and others. (1) If other assets of the estate are insufficient, a transfer resulting from a right of survivorship or POD designation under this part is not effective against the estate of a deceased party to the extent needed to pay claims against the estate and statutory allowances to the surviving spouse and children.

(2) A surviving party or beneficiary who receives payment from an account after the death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled under 72-6-211, to the extent necessary to discharge the claims and allowances described in subsection (1) remaining unpaid after application of the decedent's estate. A proceeding to assert the liability may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within 1 year after death of the decedent.

(3) A surviving party or beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other account of the decedent.

(4) Sums recovered by the personal representative must be administered as part of the decedent's estate. This section does not affect the protection from claims of the personal representative or estate of a deceased party

provided in 72-6-226 for a financial institution that makes payment in accordance with the terms of the account.

History: En. Sec. 94, Ch. 494, L. 1993.

72-6-216. Community property and tenancy by entireties. (1) A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to each other that arises from the express terms of the account or 72-6-212 may not be altered by will.

(2) This part does not affect the law governing tenancy by the entireties.

History: En. Sec. 95, Ch. 494, L. 1993.

72-6-217 through 72-6-220 reserved.

72-6-221. Authority of financial institution. A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

History: En. Sec. 96, Ch. 494, L. 1993.

72-6-222. Payment on multiple-party account. A financial institution, on request, may pay sums on deposit in a multiple-party account to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or

(2) the personal representative or a successor claiming under 72-3-1101 if proof of death is presented to the financial institution, showing that the deceased party was the survivor of all other persons named on the account as either a party or beneficiary, unless the account is without right of survivorship under 72-6-212.

History: En. Sec. 97, Ch. 494, L. 1993.

72-6-223. Payment on POD designation. A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;

(2) the beneficiary or beneficiaries, if proof of death is presented to the financial institution, showing that the beneficiary or beneficiaries survived all persons named as parties; or

(3) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution, showing that the deceased party was the survivor of all other persons named on the account as either a party or beneficiary.

History: En. Sec. 98, Ch. 494, L. 1993.

72-6-224. Payment to designated agent. A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received and whether or not the authority of the agent terminates on the disability or incapacity of a party.

History: En. Sec. 99, Ch. 494, L. 1993.

72-6-225. Payment to minor. If a financial institution is required or permitted to make payment pursuant to this part to a minor designated as a beneficiary, payment may be made pursuant to the Montana Uniform Transfers to Minors Act, Title 72, chapter 26.

History: En. Sec. 100, Ch. 494, L. 1993.

72-6-226. Discharge. (1) Payment made pursuant to this part in accordance with the type of account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(2) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted and after the financial institution has had a reasonable opportunity to act on the notice when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party shall concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(3) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(4) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

History: En. Sec. 101, Ch. 494, L. 1993.

72-6-227. Setoff. Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is either the proportion to which the party is, or immediately before death was, beneficially entitled under 72-6-211 or, in the absence of proof of that proportion, an equal share with all parties.

History: En. Sec. 102, Ch. 494, L. 1993.

Part 3
Uniform TOD Security Registration Act

72-6-301. Definitions. As used in this part, the following definitions apply:

(1) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Register", including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(3) "Registering entity" means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security, and a security account.

(5) "Security account" means:

(a) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or

(b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

History: En. Sec. 103, Ch. 494, L. 1993.

72-6-302. Registration in beneficiary form — sole or joint tenancy ownership. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form and not as tenants in common.

History: En. Sec. 104, Ch. 494, L. 1993.

72-6-303. Registration in beneficiary form — applicable law. (1) A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state:

(a) of organization of the issuer or registering entity;

(b) of the location of the registering entity's principal office;

(c) of the office of its transfer agent or its office making the registration; or

(d) listed as the owner's address at the time of registration.

(2) A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in

beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

History: En. Sec. 105, Ch. 494, L. 1993.

72-6-304. Origination of registration in beneficiary form. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

History: En. Sec. 106, Ch. 494, L. 1993.

72-6-305. Form of registration in beneficiary form. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation "POD", after the name of the registered owner and before the name of a beneficiary.

History: En. Sec. 107, Ch. 494, L. 1993.

72-6-306. Effect of registration in beneficiary form. The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then-surviving owners without the consent of the beneficiary.

History: En. Sec. 108, Ch. 494, L. 1993.

72-6-307. Ownership on death of owner. On the death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of the death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

History: En. Sec. 109, Ch. 494, L. 1993.

72-6-308. Protection of registering entity. (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this part.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on the death of the deceased owner as provided in this part.

(3) (a) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with 72-6-307 and does so in good faith reliance on:

(i) the registration;

(ii) this part; and

(iii) information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity.

(b) The protections of this part do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this part.

(4) The protection provided by this part to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

History: En. Sec. 110, Ch. 494, L. 1993.

72-6-309. Nontestamentary transfer on death. (1) A transfer on death, resulting from a registration in beneficiary form, is effective by reason of the contract regarding the registration between the owner and the registering entity and this part and is not testamentary.

(2) This part does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

History: En. Sec. 111, Ch. 494, L. 1993.

72-6-310. Terms, conditions, and forms for registration. (1) (a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for:

(i) registrations in beneficiary form; and

(ii) implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary.

(b) The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death that governs inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(a) sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.;

(b) multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.;

(c) multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TODD John S. Brown Jr. LDPS.

History: En. Sec. 112, Ch. 494, L. 1993.

72-6-311. Application of part. This part applies to registrations of securities in beneficiary form made before or after October 1, 1993, by decedents dying on or after October 1, 1993.

History: En. Sec. 131, Ch. 494, L. 1993.

CHAPTERS 7 AND 8

RESERVED

CHAPTER 9

DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH

Part 1 — Uniform Disposition of Community Property Rights at Death

72-9-101. Short title.
72-9-102. Application.
72-9-103. Rebuttable presumptions.
72-9-104 through 72-9-106 reserved.
72-9-107. Disposition upon death.
72-9-108. Perfection of title of surviving spouse.
72-9-109. Perfection of title of personal representative, heir, or devisee.
72-9-110. Purchaser for value or lender.
72-9-111 through 72-9-113 reserved.
72-9-114. Creditor's rights.
72-9-115. Acts of married persons.
72-9-116. Limitations on testamentary disposition.
72-9-117 through 72-9-119 reserved.
72-9-120. Uniformity of application and construction.

Part 1

Uniform Disposition of Community Property Rights at Death

72-9-101. Short title. This part shall be known and may be cited as the "Uniform Disposition of Community Property Rights at Death Act".

History: En. Sec. 1, Ch. 395, L. 1989; Sec. 72-6-101, MCA 1991; redes. 72-9-101 by Code Commissioner, 1993.

72-9-102. Application. This part applies to the disposition at death of the following property acquired by a married person:

(1) (a) all personal property, wherever situated, that was acquired as or became and remained community property under the laws of another jurisdiction; and

(b) all or the proportionate part of that property acquired with the rents, issues, or income of, the proceeds from, or in exchange for that community property; or

(c) property traceable to that community property; or

(2) all or the proportionate part of any real property situated in this state that was acquired with the rents, issues, or income of, the proceeds from, or in exchange for property acquired as or which became and remained community property under the laws of another jurisdiction, or property traceable to that community property.

History: En. Sec. 2, Ch. 395, L. 1989; Sec. 72-6-102, MCA 1991; redes. 72-9-102 by Code Commissioner, 1993.

Cross-References

Exempt property and allowances, Title 72, ch. 2, part 4.

Inheritance and estate taxes, Title 72, ch. 16.

72-9-103. Rebuttable presumptions. In determining whether this part applies to specific property, the following rebuttable presumptions apply:

(1) property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as or to have become and remained property to which this part applies; and

(2) real property situated in this state and personal property, wherever situated, acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which this part applies.

History: En. Sec. 3, Ch. 395, L. 1989; Sec. 72-6-103, MCA 1991; redes. 72-9-103 by Code Commissioner, 1993.

72-9-104 through 72-9-106 reserved.

72-9-107. Disposition upon death. Upon death of a married person, one-half of the property to which this part applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the Uniform Probate Code. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the Uniform Probate Code. With respect to property to which this part applies, the one-half of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will.

History: En. Sec. 4, Ch. 395, L. 1989; Sec. 72-6-107, MCA 1991; redes. 72-9-107 by Code Commissioner, 1993.

Cross-References

General probate and administration, Title 72, ch. 3, part 1.

Special provisions relating to distribution, Title 72, ch. 3, part 9.

72-9-108. Perfection of title of surviving spouse. If the title to any property to which this part applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the district court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the district court. Neither the personal representative nor the district court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which this part applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

History: En. Sec. 5, Ch. 395, L. 1989; Sec. 72-6-108, MCA 1991; redes. 72-9-108 by Code Commissioner, 1993.

72-9-109. Perfection of title of personal representative, heir, or devisee. If the title to any property to which this part applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee, as those terms are defined in 72-1-103, of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which this part applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.

History: En. Sec. 6, Ch. 395, L. 1989; Sec. 72-6-109, MCA 1991; redes. 72-9-109 by Code Commissioner, 1993.

Cross-References

Powers and duties of personal representative, Title 72, ch. 3, part 6.

Foreign personal representatives, Title 72, ch. 4.

72-9-110. Purchaser for value or lender. (1) If a surviving spouse has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee, as those terms are defined in 72-1-103, of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(4) The proceeds of a sale or creation of a security interest must be treated in the same manner as the property transferred to the purchaser for value or a lender.

History: En. Sec. 7, Ch. 395, L. 1989; Sec. 72-6-110, MCA 1991; redes. 72-9-110 by Code Commissioner, 1993.

72-9-111 through 72-9-113 reserved.

72-9-114. Creditor's rights. This part does not affect rights of creditors with respect to property to which this part applies.

History: En. Sec. 8, Ch. 395, L. 1989; Sec. 72-6-114, MCA 1991; redes. 72-9-114 by Code Commissioner, 1993.

Cross-References

Creditors' claims, Title 72, ch. 3, part 8.

72-9-115. Acts of married persons. This part does not prevent married persons from severing or altering their interests in property to which this part applies.

History: En. Sec. 9, Ch. 395, L. 1989; Sec. 72-6-115, MCA 1991; redes. 72-9-115 by Code Commissioner, 1993.

Cross-References

Elective share of surviving spouse, Title 72, ch. 2, part 2.

72-9-116. Limitations on testamentary disposition. This part does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

History: En. Sec. 10, Ch. 395, L. 1989; Sec. 72-6-116, MCA 1991; redes. 72-9-116 by Code Commissioner, 1993.

72-9-117 through 72-9-119 reserved.

72-9-120. Uniformity of application and construction. Any person applying and interpreting this part shall do so as to make uniform the law with respect to the subject of this part among those states that enact it.

History: En. Sec. 11, Ch. 395, L. 1989; Sec. 72-6-120, MCA 1991; redes. 72-9-120 by Code Commissioner, 1993.

CHAPTER 10

SUPPLEMENTARY GENERAL PROVISIONS ON PROBATE AND SUCCESSION

(Repealed. Sec. 134, Ch. 494, L. 1993)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-10-101. En. Sec. 314, p. 322, L. 1877; re-en. Sec. 314, 2nd Div. Rev. Stat. 1879; re-en. Sec. 314, 2nd Div. Comp. Stat. 1887; amd. Sec. 2910, C. Civ. Proc. 1895; re-en. Sec. 7701, Rev. C. 1907; re-en. Sec. 10355, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1704; re-en. Sec. 10355, R.C.M. 1935; R.C.M. 1947, 91-4301(part); amd. Sec. 8, Ch. 6, L. 1979.

72-10-102. En. Sec. 314, p. 322, L. 1877; re-en. Sec. 314, 2nd Div. Rev. Stat. 1879; re-en. Sec. 314, 2nd Div. Comp. Stat. 1887; amd. Sec. 2910, C. Civ. Proc. 1895; re-en. Sec. 7701, Rev. C. 1907; re-en. Sec. 10355, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1704; re-en. Sec. 10355, R.C.M. 1935; R.C.M. 1947, 91-4301(part).

72-10-103. En. Sec. 330, p. 325, L. 1877; re-en. Sec. 330, 2nd Div. Rev. Stat. 1879; re-en. Sec. 330, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2926, C. Civ. Proc. 1895; re-en. Sec. 7717, Rev. C. 1907; re-en. Sec. 10371, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1719; re-en. Sec. 10371, R.C.M. 1935; R.C.M. 1947, 91-4317.

72-10-104. En. Sec. 332, p. 326, L. 1877; re-en. Sec. 332, 2nd Div. Rev. Stat. 1879; re-en. Sec. 332, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2929, C. Civ. Proc. 1895; re-en. Sec. 7720, Rev. C. 1907; re-en. Sec. 10374, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1722; re-en. Sec. 10374, R.C.M. 1935; R.C.M. 1947, 91-4320; amd. Sec. 9, Ch. 6, L. 1979.

72-10-105. En. Sec. 109, p. 264, L. 1877; re-en. Sec. 109, 2nd Div. Rev. Stat. 1879; re-en. Sec. 109, 2nd Div. Comp. Stat. 1887; amd. Sec. 2530, C. Civ. Proc. 1895; en. Sec. 1, p. 244, L. 1897; re-en. Sec. 7484, Rev. C. 1907; re-en. Sec. 10120, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1430; re-en. Sec. 10120, R.C.M. 1935; R.C.M. 1947, 91-2001(part).

72-10-106. En. Sec. 109, p. 264, L. 1877; re-en. Sec. 109, 2nd Div. Rev. Stat. 1879; re-en. Sec. 109, 2nd Div. Comp. Stat. 1887; amd. Sec. 2530, C. Civ. Proc. 1895; en. Sec. 1, p. 244, L. 1897; re-en. Sec. 7484, Rev. C. 1907; re-en. Sec. 10120, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1430; re-en. Sec. 10120, R.C.M. 1935; R.C.M. 1947, 91-2001(part).

72-10-107. En. Sec. 317, p. 322, L. 1877; re-en. Sec. 317, 2nd Div. Rev. Stat. 1879; re-en. Sec. 317, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2913, C. Civ. Proc. 1895; re-en. Sec. 7704, Rev. C. 1907; re-en. Sec. 10358, R.C.M. 1921; re-en. Sec. 10358, R.C.M. 1935; R.C.M. 1947, 91-4304; amd. Sec. 10, Ch. 6, L. 1979.

72-10-108. En. Sec. 318, p. 322, L. 1877; re-en. Sec. 318, 2nd Div. Rev. Stat. 1879; re-en. Sec. 318, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2914, C. Civ. Proc. 1895; re-en. Sec. 7705, Rev. C. 1907; amd. Sec. 1, Ch. 40, L. 1921; re-en. Sec. 10359, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1707; re-en. Sec. 10359, R.C.M. 1935; R.C.M. 1947, 91-4305.

72-10-109. En. Sec. 319, p. 323, L. 1877; re-en. Sec. 319, 2nd Div. Rev. Stat. 1879; re-en. Sec. 319, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2915, C. Civ. Proc. 1895; re-en. Sec. 7706, Rev. C. 1907; re-en. Sec. 10360, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1708; re-en. Sec. 10360, R.C.M. 1935; R.C.M. 1947, 91-4306; amd. Sec. 11, Ch. 6, L. 1979.

72-10-110. En. Secs. 320, 322, p. 323, L. 1877; re-en. Secs. 320, 322, 2nd Div. Rev. Stat. 1879; re-en. Secs. 320, 322, 2nd Div. Comp. Stat. 1887; re-en. Secs. 2916, 2918, C. Civ. Proc. 1895; re-en. Secs. 7707, 7709, Rev. C. 1907; re-en. Secs. 10361, 10363, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1709, 1711; re-en. Secs. 10361, 10363, R.C.M. 1935; R.C.M. 1947, 91-4307, 91-4309; amd. Sec. 12, Ch. 6, L. 1979.

72-10-111. En. Sec. 331, p. 326, L. 1877; re-en. Sec. 331, 2nd Div. Rev. Stat. 1879; re-en. Sec. 331, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2927, C. Civ. Proc. 1895; re-en. Sec. 7718, Rev. C. 1907; re-en. Sec. 10372, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1720; re-en. Sec. 10372, R.C.M. 1935; R.C.M. 1947, 91-4318; amd. Sec. 13, Ch. 6, L. 1979.

72-10-112. En. Sec. 332, p. 326, L. 1877; re-en. Sec. 332, 2nd Div. Rev. Stat. 1879; re-en. Sec. 332, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2928, C. Civ. Proc. 1895; re-en. Sec. 7719, Rev. C. 1907; re-en. Sec. 10373, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1721; re-en. Sec. 10372, R.C.M. 1935; R.C.M. 1947, 91-4319.

72-10-113. En. Sec. 326, p. 324, L. 1877; re-en. Sec. 326, 2nd Div. Rev. Stat. 1879; re-en. Sec. 326, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2922, C. Civ. Proc. 1895; re-en. Sec. 7713, Rev. C. 1907; re-en. Sec. 10367, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1715; re-en. Sec. 10367, R.C.M. 1935; R.C.M. 1947, 91-4313.

72-10-201. En. Sec. 321, p. 323, L. 1877; re-en. Sec. 321, 2nd Div. Rev. Stat. 1879; re-en. Sec. 321, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2917, C. Civ. Proc. 1895; re-en. Sec. 7708, Rev. C. 1907; re-en. Sec. 10362, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1710; re-en. Sec. 10362, R.C.M. 1935; R.C.M. 1947, 91-4308.

72-10-202. En. Sec. 316, p. 322, L. 1877; re-en. Sec. 316, 2nd Div. Rev. Stat. 1879; re-en. Sec. 316, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2912, C. Civ. Proc. 1895; re-en. Sec. 7703, Rev. C. 1907; re-en. Sec. 10357, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1706; re-en. Sec. 10357, R.C.M. 1935; R.C.M. 1947, 91-4303; amd. Sec. 14, Ch. 6, L. 1979.

72-10-203. En. Sec. 323, p. 324, L. 1877; re-en. Sec. 323, 2nd Div. Rev. Stat. 1879; re-en. Sec. 323, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2919, C. Civ. Proc. 1895; re-en. Sec. 7710, Rev. C. 1907; re-en. Sec. 10364, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1712; re-en. Sec. 10364, R.C.M. 1935; R.C.M. 1947, 91-4310.

72-10-204. En. Sec. 315, p. 322, L. 1877; re-en. Sec. 315, 2nd Div. Rev. Stat. 1879; re-en. Sec. 315, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2911, C. Civ. Proc. 1895; re-en. Sec. 7702, Rev. C. 1907; re-en. Sec. 10356, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1705; re-en. Sec. 10356, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1947; R.C.M. 1947, 91-4302.

CHAPTER 11

INTESTATE SUCCESSION AND WILLS

SUPPLEMENTARY PROVISIONS

Part 1 — Intestate Succession

72-11-101. Degrees of kinship — how computed.
72-11-102. Types of kinship — lineal and collateral.
72-11-103. Computation of degrees in lineal kinship.
72-11-104. Computation of degrees in collateral kinship.
72-11-105. Repealed.

Part 2 — Wills — Execution and Revocation
(Repealed. Sec. 134, Ch. 494, L. 1993)

Part 3 — Wills — Construction and Operation
(Repealed)

Part 1
Intestate Succession

72-11-101. Degrees of kinship — how computed. The degree of kinship is established by the number of generations, and each generation is called a degree.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1855, Civ. C. 1895; re-en. Sec. 4823, Rev. C. 1907; re-en. Sec. 7076, R.C.M. 1921; Cal. Civ. C. Sec. 1389; re-en. Sec. 7076, R.C.M. 1935; R.C.M. 1947, 91-406; amd. Sec. 76, Ch. 494, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 494 near beginning substituted "kinship" for "kindred".

72-11-102. Types of kinship — lineal and collateral. There are two types of kinship, lineal and collateral. Lineal kinship, or the direct line of consanguinity, is the relationship between persons, one of whom is a descendant of the other. Collateral kinship is the relationship between people who descend from a common ancestor but are not in a direct line.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1856, Civ. C. 1895; re-en. Sec. 4824, Rev. C. 1907; re-en. Sec. 7077, R.C.M. 1921; Cal. Civ. C. Sec. 1390; re-en. Sec. 7077, R.C.M. 1935; R.C.M. 1947, 91-407; amd. Sec. 77, Ch. 494, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning lineal and collateral kinship for former text that read: "The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another but spring from a common ancestor is called the collateral line or collateral consanguinity."

Cross-References

Representation of heirs, 72-2-116.

Kindred of half blood, 72-2-117.

Share of individual related to decedent through two lines, 72-2-123.

72-11-103. Computation of degrees in lineal kinship. The degree of lineal kinship of two persons is computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins. The child is, with regard to the parent, in the first degree; the grandchild is, with regard to the grandparent, in the second degree; and vice versa as to the parent and grandparent with regard to their respective children and grandchildren.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1857, Civ. C. 1895; re-en. Sec. 4825, Rev. C. 1907; re-en. Sec. 7078, R.C.M. 1921; Cal. Civ. C. Sec. 1391; re-en. Sec. 7078, R.C.M. 1935; R.C.M. 1947, 91-408; amd. Sec. 134, Ch. 370, L. 1987; amd. Sec. 78, Ch. 494, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning the method of computing the degrees in lineal kinship for former text that read: "The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects an ancestor with those who descend from him. The second is that which connects a person with those from whom he descends."

72-11-104. Computation of degrees in collateral kinship. The degree of collateral kinship of two persons is computed by commencing with one of the persons, ascending from that person to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the line of ascent and in the line of descent, exclusive of the person from whom the computation begins. Siblings are related to each other in the second degree, uncle and niece are related to each other in the third degree, and first cousins are related to each other in the fourth degree.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1858, Civ. C. 1895; re-en. Sec. 4826, Rev. C. 1907; re-en. Sec. 7079, R.C.M. 1921; Cal. Civ. C. Sec. 1392; re-en. Sec. 7079, R.C.M. 1935; R.C.M. 1947, 91-409; amd. Sec. 79, Ch. 494, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning the computation of the degrees in collateral kinship for former text that read: "In the direct line there are as many degrees as there are generations. Thus, the son is with regard to the father in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons."

72-11-105. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1859, Civ. C. 1895; re-en. Sec. 4827, Rev. C. 1907; re-en. Sec. 7080, R.C.M. 1921; Cal. Civ. C. Sec. 1393; re-en. Sec. 7080, R.C.M. 1935; re-en. Sec. 7080, R.C.M. 1935; R.C.M. 1947, 91-410.

Part 2

Wills — Execution and Revocation (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-11-201. En. Sec. 441, p. 349, L. 1877; re-en. Sec. 441, 2nd Div. Rev. Stat. 1879; re-en. Sec. 441, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1726, Civ. C. 1895; re-en. Sec. 4729, Rev. C. 1907; re-en. Sec. 6983, R.C.M. 1921; Cal. Civ. C. Sec. 1279; Field Civ. C. Sec. 548; re-en. Sec. 6983, R.C.M. 1935; R.C.M. 1947, 91-110.

72-11-202. En. Sec. 443, p. 350, L. 1877; re-en. Sec. 443, 2nd Div. Rev. Stat. 1879; re-en. Sec. 443, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1728, Civ. C. 1895; re-en. Sec. 4731, Rev. C. 1907; re-en. Sec. 6985, R.C.M. 1921; Cal. Civ. C. Sec. 1281; Field Civ. C. Sec. 549; re-en. Sec. 6985, R.C.M. 1935; R.C.M. 1947, 91-112.

72-11-203. En. Sec. 5, p. 556, Cod. Stat. 1871; re-en. Sec. 442, p. 350, L. 1877; re-en. Sec. 442, 2nd Div. Rev. Stat. 1879; re-en. Sec. 442, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1727, Civ. C. 1895; re-en. Sec. 4730, Rev. C. 1907; re-en. Sec. 6984, R.C.M. 1921; Cal. Civ. C. Sec. 1280; re-en. Sec. 6984, R.C.M. 1935; R.C.M. 1947, 91-111.

72-11-204. En. Sec. 464, p. 354, L. 1877; re-en. Sec. 464, 2nd Div. Rev. Stat. 1879; re-en. Sec. 464, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1749, Civ. C. 1895; re-en. Sec. 4752, Rev. C. 1907; re-en. Sec. 7006, R.C.M. 1921; Cal. Civ. C. Sec. 1304; Field Civ. C. Sec. 572; re-en. Sec. 7006, R.C.M. 1935; R.C.M. 1947, 91-133.

72-11-205. En. Sec. 455, p. 352, L. 1877; re-en. Sec. 455, 2nd Div. Rev. Stat. 1879; re-en. Sec. 455, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1740, Civ. C. 1895; re-en. Sec. 4743, Rev. C. 1907; re-en. Sec. 6997, R.C.M. 1921; Field Civ. C. Sec. 564; re-en. Sec. 6997, R.C.M. 1935; R.C.M. 1947, 91-124.

Part 3

Wills — Construction and Operation (Repealed)

72-11-301 through 72-11-333. Repealed. Sec. 134, Ch. 494, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

72-11-301. En. Sec. 476, p. 356, L. 1877; re-en. Sec. 476, 2nd Div. Rev. Stat. 1879; re-en. Sec. 476, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1772, Civ. C. 1895; re-en. Sec. 4765, Rev. C. 1907; re-en. Sec. 7018, R.C.M. 1921; Cal. Civ. C. Sec. 1319; Field Civ. C. Sec. 581; re-en. Sec. 7018, R.C.M. 1935; R.C.M. 1947, 91-203.

72-11-302. En. Sec. 481, p. 357, L. 1877; re-en. Sec. 481, 2nd Div. Rev. Stat. 1879; re-en. Sec. 481, 2nd Div. Comp. Stat. 1887; re-en. Sec.

1777, Civ. C. 1895; re-en. Sec. 4770, Rev. C. 1907; re-en. Sec. 7023, R.C.M. 1921; Cal. Civ. C. Sec. 1324; Field Civ. C. Sec. 586; re-en. Sec. 7023, R.C.M. 1935; R.C.M. 1947, 91-208.

72-11-303. En. Sec. 482, p. 357, L. 1877; re-en. Sec. 482, 2nd Div. Rev. Stat. 1879; re-en. Sec. 482, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1778, Civ. C. 1895; re-en. Sec. 4771, Rev. C. 1907; re-en. Sec. 7024, R.C.M. 1921; Cal. Civ. C. Sec. 1325; Field Civ. C. Sec. 587; re-en. Sec. 7024, R.C.M. 1935; R.C.M. 1947, 91-209.

72-11-304. En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13.

72-11-305. En. Sec. 480, p. 356, L. 1877; re-en. Sec. 480, 2nd Div. Rev. Stat. 1879; re-en. Sec. 480, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1776, Civ. C. 1895; re-en. Sec. 4769, Rev. C. 1907; re-en. Sec. 7022, R.C.M. 1921; Cal. Civ. C. Sec. 1323; Field Civ. C. Sec. 585; re-en. Sec. 7022, R.C.M. 1935; R.C.M. 1947, 91-207.

72-11-306. En. Sec. 477, p. 356, L. 1877; re-en. Sec. 477, 2nd Div. Rev. Stat. 1879; re-en. Sec. 477, 2nd Div. comp. Stat. 1887; re-en. Sec. 1773, Civ. C. 1895; re-en. Sec. 4766, Rev. C. 1907; re-en. Sec. 7019, R.C.M. 1921; Cal. Civ. C. Sec. 1320; Field Civ. C. Sec. 582; re-en. Sec. 7019, R.C.M. 1935; R.C.M. 1947, 91-204.

72-11-307. En. Sec. 478, p. 356, L. 1877; re-en. Sec. 478, 2nd Div. Rev. Stat. 1879; re-en. Sec. 478, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1774, Civ. C. 1895; re-en. Sec. 4767, Rev. C. 1907; re-en. Sec. 7020, R.C.M. 1921; Cal. Civ. C. Sec. 1321; Field Civ. C. Sec. 583; re-en. Sec. 7020, R.C.M. 1935; R.C.M. 1947, 91-205.

72-11-308. En. Sec. 479, p. 356, L. 1877; re-en. Sec. 479, 2nd Div. Rev. Stat. 1879; re-en. Sec. 479, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1775, Civ. C. 1895; re-en. Sec. 4768, Rev. C. 1907; re-en. Sec. 7021, R.C.M. 1921; Cal. Civ. C. Sec. 1322; Field Civ. C. Sec. 584; re-en. Sec. 7021, R.C.M. 1935; R.C.M. 1947, 91-206.

72-11-309. En. Sec. 484, p. 357, L. 1877; re-en. Sec. 484, 2nd Div. Rev. Stat. 1879; re-en. Sec. 484, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1780, Civ. C. 1895; re-en. Sec. 4773, Rev. C. 1907; re-en. Sec. 7026, R.C.M. 1921; Cal. Civ. C. Sec. 1327; Field Civ. C. Sec. 589; re-en. Sec. 7026, R.C.M. 1935; R.C.M. 1947, 91-211.

72-11-310. En. Sec. 485, p. 357, L. 1877; re-en. Sec. 485, 2nd Div. Rev. Stat. 1879; re-en. Sec. 485, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1781, Civ. C. 1895; re-en. Sec. 4774, Rev. C. 1907; re-en. Sec. 7027, R.C.M. 1921; Cal. Civ. C. Sec. 1328; Field Civ. C. Sec. 590; re-en. Sec. 7027, R.C.M. 1935; R.C.M. 1947, 91-212.

72-11-311. En. Sec. 486, p. 357, L. 1877; re-en. Sec. 486, 2nd Div. Rev. Stat. 1879; re-en. Sec. 486, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1782, Civ. C. 1895; re-en. Sec. 4775, Rev. C. 1907; re-en. Sec. 7028, R.C.M. 1921; Cal. Civ. C. Sec. 1329; Field Civ. C. Sec. 591; re-en. Sec. 7028, R.C.M. 1935; R.C.M. 1947, 91-213.

72-11-312. En. Sec. 493, p. 358, L. 1877; re-en. Sec. 493, 2nd Div. Rev. Stat. 1879; re-en. Sec. 493, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1789, Civ. C. 1895; re-en. Sec. 4782, Rev. C. 1907; re-en. Sec. 7035, R.C.M. 1921; Cal. Civ. C. Sec. 1336; Field Civ. C. Sec. 598; re-en. Sec. 7035, R.C.M. 1935; R.C.M. 1947, 91-220.

72-11-313. En. Sec. 497, p. 359, L. 1877; re-en. Sec. 497, 2nd Div. Rev. Stat. 1879; re-en. Sec. 497, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1793, Civ. C. 1895; re-en. Sec. 4786, Rev. C. 1907; re-en. Sec. 7039, R.C.M. 1921; Cal. Civ. C. Sec. 1340; Based on Field Civ. C. Sec. 602; re-en. Sec. 7039, R.C.M. 1935; R.C.M. 1947, 91-224.

72-11-314. En. Sec. 502, p. 360, L. 1877; re-en. Sec. 502, 2nd Div. Rev. Stat. 1879; re-en. Sec. 502, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1798, Civ. C. 1895; re-en. Sec. 4791, Rev. C. 1907; re-en. Sec. 7044, R.C.M. 1921; Cal. Civ. C. Sec. 1345; Field Civ. C. Sec. 607; re-en. Sec. 7044, R.C.M. 1935; R.C.M. 1947, 91-229.

72-11-315. En. Sec. 503, p. 360, L. 1877; re-en. Sec. 503, 2nd Div. Rev. Stat. 1879; re-en. Sec. 503, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1799, Civ. C. 1895; re-en. Sec. 4792, Rev. C. 1907; re-en. Sec. 7045, R.C.M. 1921; Cal. Civ. C. Sec. 1346; Field Civ. C. Sec. 608; re-en. Sec. 7045, R.C.M. 1935; R.C.M. 1947, 91-230.

72-11-316. En. Sec. 504, p. 360, L. 1877; re-en. Sec. 504, 2nd Div. Rev. Stat. 1879; re-en. Sec. 504, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1800, Civ. C. 1895; re-en. Sec. 4793, Rev. C. 1907; re-en. Sec. 7046, R.C.M. 1921; Cal. Civ. C. Sec. 1347; Field Civ. C. Sec. 609; re-en. Sec. 7046, R.C.M. 1935; R.C.M. 1947, 91-231.

72-11-317. En. Sec. 505, p. 360, L. 1877; re-en. Sec. 505, 2nd Div. Rev. Stat. 1879; re-en. Sec. 505, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1801, Civ. C. 1895; re-en. Sec. 4794, Rev. C. 1907; re-en. Sec. 7047, R.C.M. 1921; Cal. Civ. C. Sec. 1348; Field Civ. C. Sec. 610; re-en. Sec. 7047, R.C.M. 1935; R.C.M. 1947, 91-232.

72-11-318. En. Sec. 506, p. 360, L. 1877; re-en. Sec. 506, 2nd Div. Rev. Stat. 1879; re-en. Sec. 506, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1802, Civ. C. 1895; re-en. Sec. 4795, Rev. C. 1907; re-en. Sec. 7048, R.C.M. 1921; Cal. Civ. C. Sec. 1349; Field Civ. C. Sec. 611; re-en. Sec. 7048, R.C.M. 1935; R.C.M. 1947, 91-233.

72-11-319. En. Sec. 507, p. 360, L. 1877; re-en. Sec. 507, 2nd Div. Rev. Stat. 1879; re-en. Sec. 507, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1803, Civ. C. 1895; re-en. Sec. 4796, Rev. C.

1907; re-en. Sec. 7049, R.C.M. 1921; Cal. Civ. C. Sec. 1350; Field Civ. C. Sec. 612; re-en. Sec. 7049, R.C.M. 1935; R.C.M. 1947, 91-234.

72-11-320. En. Sec. 494, p. 358, L. 1877; re-en. Sec. 494, 2nd Div. Rev. Stat. 1879; re-en. Sec. 494, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1790, Civ. C. 1895; re-en. Sec. 4783, Rev. C. 1907; re-en. Sec. 7036, R.C.M. 1921; Cal. Civ. C. Sec. 1337; Field Civ. C. Sec. 599; re-en. Sec. 7036, R.C.M. 1935; R.C.M. 1947, 91-221.

72-11-321. En. Sec. 496, p. 359, L. 1877; re-en. Sec. 496, 2nd Div. Rev. Stat. 1879; re-en. Sec. 496, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1792, Civ. C. 1895; re-en. Sec. 4785, Rev. C. 1907; re-en. Sec. 7038, R.C.M. 1921; Cal. Civ. C. Sec. 1339; Field Civ. C. Sec. 601; re-en. Sec. 7038, R.C.M. 1935; R.C.M. 1947, 91-223.

72-11-322. En. Sec. 495, p. 359, L. 1877; re-en. Sec. 495, 2nd Div. Rev. Stat. 1879; re-en. Sec. 495, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1791, Civ. C. 1895; re-en. Sec. 4784, Rev. C. 1907; re-en. Sec. 7037, R.C.M. 1921; Cal. Civ. C. Sec. 1338; Field Civ. C. Sec. 600; re-en. Sec. 7037, R.C.M. 1935; R.C.M. 1947, 91-222.

72-11-323 through 72-11-330 reserved.

72-11-331. En. Sec. 499, p. 359, L. 1877; re-en. Sec. 499, 2nd Div. Rev. Stat. 1879; re-en. Sec. 499, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1795, Civ. C. 1895; re-en. Sec. 4788, Rev. C. 1907; re-en. Sec. 7041, R.C.M. 1921; Cal. Civ. C. Sec. 1342; Field Civ. C. Sec. 604; re-en. Sec. 7041, R.C.M. 1935; R.C.M. 1947, 91-226.

72-11-332. En. Sec. 501, p. 359, L. 1877; re-en. Sec. 501, 2nd Div. Rev. Stat. 1879; re-en. Sec. 501, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1797, Civ. C. 1895; re-en. Sec. 4790, Rev. C. 1907; re-en. Sec. 7043, R.C.M. 1921; Cal. Civ. C. Sec. 1344; Field Civ. C. Sec. 606; re-en. Sec. 7043, R.C.M. 1935; R.C.M. 1947, 91-228.

72-11-333. En. Sec. 2, p. 555, Cod. Stat. 1871; re-en. Sec. 471, p. 355, L. 1877; re-en. Sec. 471, 2nd Div. Rev. Stat. 1879; re-en. Sec. 471, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1756, Civ. C. 1895; re-en. Sec. 4759, Rev. C. 1907; re-en. Sec. 7013, R.C.M. 1921; Cal. Civ. C. Sec. 1311; re-en. Sec. 7013, R.C.M. 1935; R.C.M. 1947, 91-140.

72-11-334. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 1, p. 69, L. 1893; re-en. Sec. 1759, Civ. C. 1895; re-en. Sec. 4762, Rev. C. 1907; re-en. Sec. 7015, R.C.M. 1921; Cal. Civ. C. Sec. 1313; re-en. Sec. 7015, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1945; R.C.M. 1947, 91-142.

CHAPTER 12

PROBATE AND ADMINISTRATION SUPPLEMENTARY PROVISIONS

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72-12-201 through 72-12-205. Repealed.
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Part 10 — Closing Estates — Accounting
(Repealed. Sec. 134, Ch. 494, L. 1993)

Part 1

General Provisions (Repealed)

72-12-101. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2900, C. Civ. Proc. 1895; re-en. Sec. 7698, Rev. C. 1907; re-en. Sec. 10352, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1699; re-en. Sec. 10352, R.C.M. 1935; amd. Sec. 2, Ch. 24, L. 1969; R.C.M. 1947, 91-4201.

72-12-102. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2901, C. Civ. Proc. 1895; re-en. Sec. 7699, Rev. C. 1907; re-en. Sec. 10353, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1700; re-en. Sec. 10353, R.C.M. 1935; R.C.M. 1947, 91-4202.

72-12-103. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2902, C. Civ. Proc. 1895; re-en. Sec. 7700, Rev. C. 1907; re-en. Sec. 10354, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1701; re-en. Sec. 10354, R.C.M. 1935; R.C.M. 1947, 91-4203.

72-12-104. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Secs. 509-530, pp. 360-363, L. 1877; re-en. Secs. 509-530, 2nd Div. Rev. Stat. 1879; re-en. Secs. 509-530, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1828, Civ. C. 1895; re-en. Sec. 4806, Rev. C. 1907; re-en. Sec. 7059, R.C.M. 1921; Cal. Civ. C. Sec. 1365; Field Civ. C. Sec. 622; re-en. Sec. 7059, R.C.M. 1935; R.C.M. 1947, 91-309.

Part 2

Will Contest — Procedure

72-12-201 through 72-12-205. Repealed. Sec. 134, Ch. 494, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

72-12-201. En. Sec. 21, p. 245, L. 1877; re-en. Sec. 21, 2nd Div. Rev. Stat. 1879; re-en. Sec. 21, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2341, C. Civ. Proc. 1895; re-en. Sec. 7398, Rev. C. 1907; re-en. Sec. 10033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1313; re-en. Sec. 10033, R.C.M. 1935; R.C.M. 1947, 91-902.

72-12-202. En. Sec. 22, p. 245, L. 1877; re-en. Sec. 22, 2nd Div. Rev. Stat. 1879; re-en. Sec. 22, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2342, C. Civ. Proc. 1895; re-en. Sec. 7399, Rev. C. 1907; re-en. Sec. 10034, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1314; re-en. Sec. 10034, R.C.M. 1935; R.C.M. 1947, 91-903.

72-12-203. (1)En. Sec. 24, p. 246, L. 1877; re-en. Sec. 24, 2nd Div. Rev. Stat. 1879; re-en. Sec. 24, 2nd Div. Comp. Stat. 1887;

re-en. Sec. 2344, C. Civ. Proc. 1895; re-en. Sec. 7401, Rev. C. 1907; re-en. Sec. 10036, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1316; re-en. Sec. 10036, R.C.M. 1935; Sec. 91-905, R.C.M. 1947; (2)En. Sec. 26, p. 246, L. 1877; re-en. Sec. 26, p. 197, 2nd Div. Rev. Stat. 1879; re-en. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 2346, C. Civ. Proc. 1895; re-en. Sec. 7403, Rev. C. 1907; re-en. Sec. 10038, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1318; re-en. Sec. 10038, R.C.M. 1935; Sec. 91-907, R.C.M. 1947; R.C.M. 1947, 91-905, 91-907(part).

72-12-204. En. Sec. 25, p. 246, L. 1877; re-en. Sec. 25, 2nd Div. Rev. Stat. 1879; re-en. Sec. 25, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2345, C. Civ. Proc. 1895; re-en. Sec. 7402, Rev. C. 1907; re-en. Sec. 10037, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1317; re-en. Sec. 10037, R.C.M. 1935; R.C.M. 1947, 91-906.

72-12-205. En. Sec. 26, p. 246, L. 1877; re-en. Sec. 26, p. 197, 2nd Div. Rev. Stat. 1879; re-en. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 2346, C. Civ. Proc. 1895; re-en. Sec. 7403, Rev. C. 1907; re-en. Sec. 10038, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1318; re-en. Sec. 10038, R.C.M. 1935; R.C.M. 1947, 91-907(part).

72-12-206. Fees and expenses — by whom paid. When the validity or probate of a will is contested through court action, the attorney fees and costs, as provided in 25-10-201, incurred in defending the validity or probate of the will must be paid by the party contesting the validity or probate of the will if the will in probate is confirmed. If the probate is revoked, costs, as provided in 25-10-201, but not attorney fees, must be paid by the party who resisted the revocation or out of the property of the decedent, as the court directs.

History: En. Sec. 35, p. 248, L. 1877; re-en. Sec. 35, 2nd Div. Rev. Stat. 1879; re-en. Sec. 35, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2365, C. Civ. Proc. 1895; re-en. Sec. 7412, Rev. C. 1907; re-en. Sec. 10047, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1332; re-en. Sec. 10047, R.C.M. 1935; amd. Sec. 16, Ch. 365, L. 1974; R.C.M. 1947, 91-1106; amd. Sec. 80, Ch. 494, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 494 near middle of first sentence substituted "attorney fees and costs as provided in 25-10-201, incurred in defending the validity or probate of the will" for "fees and expenses"; near middle of second sentence, after "costs", inserted "as provided in 25-10-201, but not attorney fees"; and made minor changes in style.

Part 3

Lost Wills — Procedure (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-301. En. Sec. 39, p. 249, L. 1877; re-en. Sec. 39, 2nd Div. Rev. Stat. 1879; re-en. Sec. 39, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2372, C. Civ. Proc. 1895; re-en. Sec. 7416, Rev. C. 1907; re-en. Sec. 10051, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1340; re-en. Sec. 10051, R.C.M. 1935; R.C.M. 1947, 91-1203.

72-12-302. En. Sec. 40, p. 249, L. 1877; re-en. Sec. 40, 2nd Div. Rev. Stat. 1879; re-en. Sec. 40, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2373, C. Civ. Proc. 1895; re-en. Sec. 7417, Rev. C. 1907; re-en. Sec. 10052, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1341; re-en. Sec. 10052, R.C.M. 1935; R.C.M. 1947, 91-1204.

Part 4

Handwriting Analysis

72-12-401. Petition for handwriting analysis. In any proceeding involving the probate, either contested or uncontested, of a will in which the signature of the testator or of any witness is an issue, any party to the proceeding may file with the court a verified petition requesting that the original will be delivered to a handwriting expert residing and having his place of business outside the state or outside the county for an examination of any of the signatures on the will.

History: **En. Sec. 1, Ch. 13, L. 1974; R.C.M. 1947, 91-813.**

72-12-402. Court to determine necessity of procedure and qualifications of expert. The court, upon notice and hearing, shall determine whether the procedure is justified by the circumstances of the case and whether the handwriting expert specified in the petition is a qualified professional handwriting expert.

History: **En. Sec. 2, Ch. 13, L. 1974; R.C.M. 1947, 91-814.**

72-12-403. Clerk to mail will to expert — notice. If the court grants the petition for delivery of the original will to a qualified handwriting expert residing and having his place of business outside the county or state, the clerk of court shall make at least two photocopies of the original will, which photocopies shall remain in the custody of the clerk of court. The clerk shall mail the original will by registered or certified mail, return receipt requested, to the handwriting expert specified in the order and shall give notice of the mailing by mailing copies of the order to each of the parties to the proceeding and to the handwriting expert.

History: **En. Sec. 3, Ch. 13, L. 1974; R.C.M. 1947, 91-815.**

72-12-404. Expert to return will to clerk. Upon completion of his analysis, the handwriting expert shall return the original will to the clerk of court by registered or certified mail, return receipt requested.

History: **En. Sec. 4, Ch. 13, L. 1974; R.C.M. 1947, 91-816.**

72-12-405. Expert to mail report to petitioner. Unless the court orders another disposition of the written report, the handwriting expert, upon completion of his analysis, shall mail his written report to the party who requested it.

History: **En. Sec. 5, Ch. 13, L. 1974; R.C.M. 1947, 91-817.**

72-12-406. Petitioner to pay all fees. All fees and expenses arising from the procedure outlined in this part, including the cost of photocopying the will, the expense of all registered or certified mailings, and the handwriting expert's fee, shall be paid by the party requesting the handwriting analysis.

History: **En. Sec. 6, Ch. 13, L. 1974; R.C.M. 1947, 91-818.**

72-12-407. Report property of petitioner unless interested party shares fees. Unless the court otherwise orders, the handwriting expert's written report shall be the sole and exclusive property of the party requesting it. However, upon demand and the payment of his pro rata share of the fees and costs of the handwriting expert, as shall be determined by the court, any interested party may obtain a certified copy of the written report.

History: **En. Sec. 7, Ch. 13, L. 1974; R.C.M. 1947, 91-819.**

Part 5

Personal Representative (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-501. En. Sec. 57, p. 254, L. 1877; re-en. Sec. 57, 2nd Div. Rev. Stat. 1879; re-en. Sec. 57, 2nd Div. Comp. Stat. 1887; re-en. Sec.

2432, C. Civ. Proc. 1895; re-en. Sec. 7434, Rev. C. 1907; re-en. Sec. 10070, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1367; re-en. Sec. 10070, R.C.M. 1935; R.C.M. 1947, 91-1403.

72-12-502. En. Sec. 166, p. 282, L. 1877; re-en. Sec. 166, 2nd Div. Rev. Stat. 1879; re-en. Sec. 166, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2619, C. Civ. Proc. 1895; re-en. Sec. 7541, Rev. C. 1907; re-en. Sec. 10190, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1509; re-en. Sec. 10190, R.C.M. 1935; R.C.M. 1947, 91-2721.

72-12-503. En. Sec. 231, p. 301, L. 1877; re-en. Sec. 231, 2nd Div. Rev. Stat. 1879; re-en. Sec. 231, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2736, C. Civ. Proc. 1895; re-en. Sec. 7609, Rev. C. 1907; re-en. Sec. 10263, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1587; re-en. Sec. 10263, R.C.M. 1935; R.C.M. 1947, 91-3207.

Part 6

Third Parties Handling Estate Property — Recovery — Account (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-601. En. Sec. 129, p. 270, L. 1877; re-en. Sec. 129, 2nd Div. Rev. Stat. 1879; re-en. Sec. 129, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2570, C. Civ. Proc. 1895; re-en. Sec. 7504, Rev. C. 1907; re-en. Sec. 10140, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1458; re-en. Sec. 10140, R.C.M. 1935; amd. Sec. 66, Ch. 359, L. 1977; R.C.M. 1947, 91-2301.

72-12-602. En. Sec. 130, p. 270, L. 1877; re-en. Sec. 130, 2nd Div. Rev. Stat. 1879; re-en. Sec. 130, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2571, C. Civ. Proc. 1895; re-en. Sec. 7505, Rev. C. 1907; re-en. Sec. 10141, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1459; re-en. Sec. 10141, R.C.M. 1935; amd. Sec. 67, Ch. 359, L. 1977; R.C.M. 1947, 91-2302.

72-12-603. En. Sec. 131, p. 271, L. 1877; re-en. Sec. 131, 2nd Div. Rev. Stat. 1879; re-en. Sec. 131, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2572, C. Civ. Proc. 1895; re-en. Sec. 7506, Rev. C. 1907; re-en. Sec. 10142, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1460; re-en. Sec. 10142, R.C.M. 1935; amd. Sec. 68, Ch. 359, L. 1977; R.C.M. 1947, 91-2303(part).

72-12-604. En. Sec. 131, p. 271, L. 1877; re-en. Sec. 131, 2nd Div. Rev. Stat. 1879; re-en. Sec. 131, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2572, C. Civ. Proc. 1895; re-en. Sec. 7506, Rev. C. 1907; re-en. Sec. 10142, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1460; re-en. Sec. 10142, R.C.M. 1935; amd. Sec. 68, Ch. 359, L. 1977; R.C.M. 1947, 91-2303(part).

72-12-605. En. Sec. 132, p. 271, L. 1877; re-en. Sec. 132, 2nd Div. Rev. Stat. 1879; re-en. Sec. 132, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2573, C. Civ. Proc. 1895; re-en. Sec. 7507, Rev. C. 1907; re-en. Sec. 10143, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1461; re-en. Sec. 10143, R.C.M. 1935; R.C.M. 1947, 91-2304.

Part 7

Powers and Duties of Surviving Partner (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-701. En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

72-12-702. En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

72-12-703. En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

72-12-704. En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec.

1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

Part 8

Claims Against Estate (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-801. En. Sec. 152, p. 277, L. 1877; re-en. Sec. 152, 2nd Div. Rev. Stat. 1879; re-en. Sec. 152, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2605, C. Civ. Proc. 1895; re-en. Sec. 7527, Rev. C. 1907; re-en. Sec. 10175, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1495; re-en. Sec. 10175, R.C.M. 1935; amd. Sec. 9, Ch. 263, L. 1975; R.C.M. 1947, 91-2706.

72-12-802. En. Sec. 158, p. 279, L. 1877; re-en. Sec. 158, 2nd Div. Rev. Stat. 1879; re-en. Sec. 158, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2611, C. Civ. Proc. 1895; re-en. Sec. 7533, Rev. C. 1907; re-en. Sec. 10182, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1501; re-en. Sec. 10182, R.C.M. 1935; R.C.M. 1947, 91-2713; amd. Sec. 15, Ch. 6, L. 1979.

72-12-803. En. Sec. 170, p. 283, L. 1877; re-en. Sec. 170, 2nd Div. Rev. Stat. 1879; re-en. Sec. 170, 2nd Div. Comp. Stat. 1887; amd. Sec. 2623, C. Civ. Proc. 1895; re-en. Sec. 7545, Rev. C. 1907; re-en. Sec. 10194, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1513; re-en. Sec. 10194, R.C.M. 1935; amd. Sec. 10, Ch. 263, L. 1975; R.C.M. 1947, 91-2725.

Part 9

Special Provisions Relating to Distribution (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-901. En. Sec. 123, p. 268, L. 1877; re-en. Sec. 123, 2nd Div. Rev. Stat. 1879; re-en. Sec. 123, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2555, C. Civ. Proc. 1895; re-en. Sec. 7498, Rev. C. 1907; re-en. Sec. 10134, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1448; re-en. Sec. 10134, R.C.M. 1935; R.C.M. 1947, 91-2206.

Part 10

Closing Estates — Accounting (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-1001. En. Sec. 248, p. 305, L. 1877; re-en. Sec. 248, 2nd Div. Rev. Stat. 1879; re-en. Sec. 248, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2771, C. Civ. Proc. 1895; re-en. Sec. 7628, Rev. C. 1907; re-en. Sec. 10282, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1613; re-en. Sec. 10282, R.C.M. 1935; R.C.M. 1947, 91-3402.

72-12-1002. En. Sec. 249, p. 305, L. 1877; re-en. Sec. 249, 2nd Div. Rev. Stat. 1879; re-en. Sec. 249, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2772, C. Civ. Proc. 1895; re-en. Sec. 7629, Rev. C. 1907; re-en. Sec. 10283, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1614; re-en. Sec. 10283, R.C.M. 1935; R.C.M. 1947, 91-3403.

72-12-1003. En. Sec. 250, p. 305, L. 1877; re-en. Sec. 250, 2nd Div. Rev. Stat. 1879; re-en. Sec. 250, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2773, C. Civ. Proc. 1895; re-en. Sec. 7630, Rev. C. 1907; re-en. Sec. 10284, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1615; re-en. Sec. 10284, R.C.M. 1935; R.C.M. 1947, 91-3404.

72-12-1004. En. Sec. 252, p. 305, L. 1877; re-en. Sec. 252, 2nd Div. Rev. Stat. 1879; re-en. Sec. 252, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2775, C. Civ. Proc. 1895; re-en. Sec. 7632, Rev. C. 1907; re-en. Sec. 10286, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1617; re-en. Sec. 10286, R.C.M. 1935; amd. Sec. 13, Ch. 365, L. 1974; R.C.M. 1947, 91-3406.

CHAPTER 13

PERSONS UNDER DISABILITY SUPPLEMENTARY PROVISIONS

(Repealed. Sec. 134, Ch. 494, L. 1993)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-13-101. En. Sec. 403, p. 344, L. 1877; re-en. Sec. 403, 2nd Div. Rev. Stat. 1879; re-en. Sec. 403, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3054, C. Civ. Proc. 1895; re-en. Sec. 7811, Rev. C. 1907; re-en. Sec. 10459, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1804; re-en. Sec. 10459, R.C.M. 1935; R.C.M. 1947, 91-5206.

72-13-102. En. Sec. 404, p. 344, L. 1877; re-en. Sec. 404, 2nd Div. Rev. Stat. 1879; re-en. Sec. 404, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3055, C. Civ. Proc. 1895; re-en. Sec. 7812, Rev. C. 1907; re-en. Sec. 10460, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1805; re-en. Sec. 10460, R.C.M. 1935; R.C.M. 1947, 91-5207.

72-13-103. En. Sec. 405, p. 344, L. 1877; re-en. Sec. 405, 2nd Div. Rev. Stat. 1879; re-en. Sec. 405, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3056, C. Civ. Proc. 1895; re-en. Sec. 7813, Rev. C. 1907; re-en. Sec. 10461, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1806; re-en. Sec. 10461, R.C.M. 1935; R.C.M. 1947, 91-5208.

72-13-201. En. Sec. 406, p. 344, L. 1877; re-en. Sec. 406, 2nd Div. Rev. Stat. 1879; re-en. Sec. 406, 2nd Div. Comp. Stat. 1887; amd. Sec. 3057, C. Civ. Proc. 1895; re-en. Sec. 7814, Rev. C. 1907; re-en. Sec. 10462, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1807; re-en. Sec. 10462, R.C.M. 1935; R.C.M. 1947, 91-5209.

72-13-202. En. Sec. 374, p. 337, L. 1877; re-en. Sec. 374, 2nd Div. Rev. Stat. 1879; re-en. Sec. 374, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2987, C. Civ. Proc. 1895; re-en. Sec. 7776, Rev. C. 1907; re-en. Sec. 10424, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1775; re-en. Sec. 10424, R.C.M. 1935; R.C.M. 1947, 91-4908.

72-13-203. En. Sec. 425, p. 348, L. 1877; re-en. Sec. 425, 2nd Div. Rev. Stat. 1879; re-en. Sec. 425, 2nd Div. Comp. Stat. 1887; re-en. Sec. 346, Civ. C. 1895; re-en. Sec. 3789, Rev. C. 1907; re-en. Sec. 5884, R.C.M. 1921; Cal. Civ. C. Sec. 252; Field Civ. C. Sec. 133; re-en. Sec. 5884, R.C.M. 1935; R.C.M. 1947, 91-4521.

72-13-301. En. Sec. 417, p. 346, L. 1877; re-en. Sec. 417, 2nd Div. Rev. Stat. 1879; re-en. Sec. 417, 2nd Div. Comp. Stat. 1887; re-en. Sec. 338, Civ. C. 1895; re-en. Sec. 3781, Rev. C. 1907; re-en. Sec. 5876, R.C.M. 1921; Field Civ. C. Sec. 125; re-en. Sec. 5876, R.C.M. 1935; R.C.M. 1947, 91-4509.

CHAPTER 14

ESCHEATED ESTATES

Part 1 — General Provisions

72-14-101. Short title.
72-14-102. When title to escheated property vests in state.
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Part 2 — Procedure for State Acquisition of Escheatable Property

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72-14-203. Investment of deposited moneys pending proceedings.
72-14-204. Order directing sale of property upon final settlement of estate.
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Part 3 — Actions for Claim of Escheated Property

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72-14-302. Statute of limitations.
72-14-303. Inheritance tax — determination — objections.

Part 4 — Fiduciary Deposit in Certain Cases Claims — Escheat

72-14-401. Fiduciary deposit of money when interested person under disability or similar circumstances — receipt as voucher.
72-14-402. Claim for money deposited in county treasury.
72-14-403. Deposit of unclaimed property in state treasury — escheat.

Chapter Cross-References

Uniform Disposition of Unclaimed Property Act, Title 70, ch. 9, parts 1 through 3.

Part 1
General Provisions

72-14-101. Short title. Parts 1 through 3 of this chapter are to be known as the "Escheated Estates Act".

History: En. Sec. 1, Ch. 184, L. 1943; R.C.M. 1947, 91-501; amd. Sec. 16, Ch. 6, L. 1979; amd. Sec. 1, Ch. 628, L. 1979.

72-14-102. When title to escheated property vests in state. (1) Whenever the title to any property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, the title vests in the state of Montana immediately upon the death of the owner without an inquest or other similar proceeding and there is no presumption that the owner died leaving heirs or next of kin.

(2) This chapter does not apply to any rural electric or telephone cooperative organized under Title 35, chapter 18, if the board of trustees of the cooperative has acted to retain patronage refunds that are made by the cooperative to a member or former member and that remain unclaimed for 5 years, as provided in 70-9-203.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 17, Ch. 6, L. 1979; amd. Sec. 2, Ch. 628, L. 1979; amd. Sec. 5, Ch. 263, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 263 inserted (2) providing that Title 72, chapter 14, does not apply to certain unclaimed patronage refunds made by a cooperative; and made minor changes in style.

Cross-References

Escheat to state when no taker, 72-2-115.

72-14-103. Duty of attorney general — employment of special assistant. (1) The attorney general of the state of Montana shall be the legal adviser in connection with all escheated property matters, and it is the duty of the attorney general to institute investigations and conduct inquiries for the discovery of all real and personal property which may have escheated or should escheat to the state and for that purpose has the power to cite any and all persons before any of the district courts of this state to answer investigations and render accounts concerning said property, real or personal, and to examine all books and papers of any and all corporations. When any real or personal property is discovered which should escheat to the state, the attorney general must institute suit in the district court of the county where said property shall be situated for the recovery and to escheat the same to the state and shall take all steps necessary to secure such escheat. The proceedings in all such actions shall be those provided for in parts 1 through 3 of this chapter.

(2) For this purpose the attorney general is authorized and empowered to employ a special assistant and incur necessary expenses subject to appropriation limitations.

History: Ap. p. Sec. 463, Pol. C. 1895; re-en. Sec. 200, Rev. C. 1907; re-en. Sec. 206, R.C.M. 1921; Cal. Pol. C. Sec. 474; re-en. Sec. 206, R.C.M. 1935; Sec. 82-409, R.C.M. 1947; Ap. p. Sec. 12, Ch. 184, L. 1943; amd. Sec. 1, Ch. 193, L. 1953; amd. Sec. 115, Ch. 147, L. 1963; amd. Sec. 1, Ch. 377, L. 1971; Sec. 91-512, R.C.M. 1947; R.C.M. 1947, 82-409, 91-512.

Part 2

Procedure for State Acquisition of Escheatable Property

Part Cross-References

Presentation of claims against county, 7-6-2421.

72-14-201. Discovery to determine existence of escheatable property. In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the attorney general or his assistant to obtain discovery on motion in the district court requiring any such person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat or any other information pertinent to the recovery of such property by the state of Montana or which information may lead to the discovery of such escheatable property.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part).

72-14-202. Public administrator to deposit moneys with county treasurer — disbursement for administration — accounts. (1) It is the duty of every public administrator, as soon as he receives the same, to deposit with the county treasurer of the county in which probate proceedings are pending all moneys of the estate, and such moneys may be drawn upon the order of the public administrator, countersigned by a district judge, when required for the purposes of administration.

(2) It is the duty of the county treasurer to receive and safely keep all such moneys and pay them out upon the order of the public administrator, when countersigned by a district judge and not otherwise, and to keep an account with such estate of all moneys received and paid to him; and for the safekeeping and payment of all such moneys, as herein provided, the treasurer and his sureties are liable upon his official bond.

History: En. Sec. 3, Ch. 184, L. 1943; R.C.M. 1947, 91-503.

72-14-203. Investment of deposited moneys pending proceedings. The moneys thus deposited may, upon order of the court or judge, be invested pending the proceedings in securities of the United States or of this state, when such investment is for the best interests of the estate.

History: En. Sec. 4, Ch. 184, L. 1943; amd. Sec. 111, Ch. 147, L. 1963; amd. Sec. 2, Ch. 156, L. 1971; amd. Sec. 68, Ch. 391, L. 1973; R.C.M. 1947, 91-504(part).

72-14-204. Order directing sale of property upon final settlement of estate. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the public administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall keep an account with such estate of all moneys received and paid to him, and the county treasurer shall forthwith remit all of said money to the department of revenue with a statement as to the estates to which the money belongs. The department shall immediately deliver such money to the state treasurer who shall thereupon deposit such money so received by him in the agency fund of the state of Montana.

History: En. Sec. 4, Ch. 184, L. 1943; amd. Sec. 111, Ch. 147, L. 1963; amd. Sec. 2, Ch. 156, L. 1971; amd. Sec. 68, Ch. 391, L. 1973; R.C.M. 1947, 91-504(part).

72-14-205. Unsold intangible personal property — how disposed of — auction sale. (1) If the intangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate as by law provided, then it shall be the duty of the personal representative to deliver all of such property to the department of revenue with a statement setting forth the name of the estate to which it belongs, and the department must within 1 year of the receipt of such property cause the same to be sold to the highest bidder at a public auction sale at the department's office in Helena, Montana.

(2) The department shall give notice of such sale by publication in a newspaper published in the city of Helena, Montana, once a week for 2 successive weeks making in all two publications, the last publication to be at least 20 days prior to the date of such sale. Such notice shall give the time and place of such sale and shall contain a list and description of the stocks, bonds, securities, or other intangible personal property to be sold.

(3) All of the expenses of such sale shall be deducted from the proceeds thereof by the department, and the balance of such proceeds shall be delivered by the department to the state treasurer for deposit in the agency fund of the state of Montana.

History: En. Sec. 5, Ch. 184, L. 1943; amd. Sec. 112, Ch. 147, L. 1963; amd. Sec. 3, Ch. 156, L. 1971; amd. Sec. 69, Ch. 391, L. 1973; R.C.M. 1947, 91-505; amd. Sec. 3, Ch. 628, L. 1979.

72-14-206. Unsold real property — how disposed of — auction sale. (1) If the real property was not sold by the personal representative at the final settlement of the estate as by law provided, then it shall be the duty of the personal representative to make and execute to the state of Montana a deed and to deliver the same to the county clerk and recorder of the county wherein such real property is situated, and it shall then become the duty of the county clerk and recorder to file and record said deed, without charge, and after being so recorded the county clerk and recorder shall mail the deed to the department of revenue, which shall make a record thereof and deliver the deed to the board of land commissioners.

(2) Within 1 year after the receipt of such recorded deed, the board shall cause such property to be sold to the highest bidder at public auction sale to be held at the courthouse in the county where such real property or any part thereof is situated.

(3) The board shall give notice of such sale by publication in a newspaper published in the county wherein such real estate or any part thereof is situated once a week for 2 weeks, making in all two publications, the last publication to be at least 20 days prior to the date of such sale. Such notice shall give the time and place of such sale and contain a description of the real property to be sold.

(4) All expenses of such sale shall be deducted by the board from the proceeds thereof, and the balance of such proceeds shall be turned over to the state treasurer who shall deposit the same in the agency fund of the state of Montana. The board shall provide the department with a statement indicating the sale price, expenses, and net proceeds resulting from each such sale.

History: En. Sec. 6, Ch. 184, L. 1943; amd. Sec. 113, Ch. 147, L. 1963; amd. Sec. 4, Ch. 156, L. 1971; amd. Sec. 70, Ch. 391, L. 1973; R.C.M. 1947, 91-506; amd. Sec. 4, Ch. 628, L. 1979.

72-14-207. Unsold tangible personal property — how disposed of — auction sale. (1) If the tangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate as provided by law, it is the duty of the personal representative to deliver such property to the county treasurer. The county treasurer must, within 1 year of the receipt of such property, cause it to be sold to the highest bidder at a public auction sale at the county seat of the county of administration of the estate.

(2) The county treasurer shall give notice of such sale by publication in a newspaper published in the county of administration once a week for 2 successive weeks making in all two publications, the last publication to be at least 20 days prior to the date of such sale. The notice shall give the time and place of such sale and contain a description of the property to be sold.

(3) All expenses of such sale shall be deducted from the proceeds thereof by the county treasurer, and the balance of such proceeds shall be delivered by the county treasurer to the department of revenue for deposit in the agency fund of the state of Montana.

History: En. Sec. 7, Ch. 184, L. 1943; amd. Sec. 114, Ch. 147, L. 1963; amd. Sec. 5, Ch. 156, L. 1971; amd. Sec. 71, Ch. 391, L. 1973; R.C.M. 1947, 91-507; amd. Sec. 5, Ch. 628, L. 1979.

72-14-208. Sales by department of revenue and county treasurer — how conducted. All hereinbefore mentioned sales by the department of revenue or county treasurer must be for cash at public auction and shall be made to the highest bidder. However, the seller may reject all bids which are disproportionate to the value of the property being sold.

History: En. Sec. 8, Ch. 184, L. 1943; amd. Sec. 6, Ch. 156, L. 1971; amd. Sec. 72, Ch. 391, L. 1973; R.C.M. 1947, 91-508; amd. Sec. 6, Ch. 628, L. 1979.

72-14-209. Deposit of all sums escheated — agency fund. All sums escheated under the provisions of parts 1 through 3 of this chapter shall be delivered by the department of revenue to the state treasurer and deposited by the treasurer in the agency fund.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 7, Ch. 628, L. 1979.

72-14-210. Agency fund moneys to be held in trust — deposit in public school nonexpendable trust fund. Moneys and properties placed in the agency fund shall be held in trust for a period of 5 years prior to deposit in the public school nonexpendable trust fund by the state treasurer; such trust being for the benefit of persons claiming property pursuant to part 3 of this chapter. Such a claim may be brought for an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 8, Ch. 628, L. 1979; amd. Sec. 31, Ch. 281, L. 1983.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Part 3

Actions for Claim of Escheated Property

72-14-301. Filing of action — service — applicability of other procedural provisions. (1) Any persons claiming property in the hands of the state treasurer must bring an action in the district court of Lewis and Clark County, Montana, against the state treasurer.

(2) In such action one copy of the complaint and summons must be served upon the state treasurer, one must be served upon the attorney general, and one must be served upon the director of revenue.

(3) Such action shall be prosecuted subject to all of the provisions of the statutes of this state in relation to civil actions generally, including the right of either party to appeal to the supreme court of the state of Montana.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973; R.C.M. 1947, 91-509(part).

72-14-302. Statute of limitations. Such action must be brought within 5 years from the date on which the money or property is received by the state treasurer, saving, however, to minors and persons of unsound mind or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or 5 years after their respective disabilities cease.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973; R.C.M. 1947, 91-509(part); amd. Sec. 9, Ch. 628, L. 1979; amd. Sec. 11, Ch. 2, L. 1983.

72-14-303. Inheritance tax — determination — objections. The inheritance tax on estates subject to parts 1 through 3 of this chapter is to be determined and objections filed in accordance with Title 72, chapter 16, part 4. The determination of the department of revenue shall fix the amount of inheritance tax, if any, which is due from a person claiming under this part to the state of Montana upon the money or property claimed, and none of the money or property shall be turned over to the claimant until such inheritance tax is paid. The department of revenue shall issue its interlocutory certificate showing the amount of said inheritance tax due, if any, and shall have the right to file objections and be heard upon the final determination of said tax.

History: **En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973; R.C.M. 1947, 91-509(part); amd. Sec. 10, Ch. 628, L. 1979.**

Part 4

Fiduciary Deposit in Certain Cases Claims — Escheat

72-14-401. Fiduciary deposit of money when interested person under disability or similar circumstances — receipt as voucher. When property in the hands of a personal representative, trustee, or other fiduciary is assigned or distributed to any heir, legatee, devisee, creditor, beneficiary, or person interested in any estate or trust who has no agent in this state or who cannot be found or who refuses to accept the same or to give a proper voucher therefor or to a minor or incompetent person who has no legal guardian to receive the same or person authorized to receipt therefor and the same or any part thereof consists of money, the personal representative, trustee, or other fiduciary may deposit the money in a special fund in the name of the heir, legatee, devisee, creditor, beneficiary, or person interested with the county treasurer of the county in which the proceedings are pending or in which such property is located, who shall give a receipt for the same and be liable upon his official bond therefor; and said receipt shall be deemed and received by the court or judge thereof as a voucher in favor of the personal representative, trustee, or other fiduciary with the same force and effect as if executed by such heir, legatee, devisee, creditor, beneficiary, or person interested.

History: **En. Sec. 1, Ch. 128, L. 1947; R.C.M. 1947, 91-524; amd. Sec. 11, Ch. 628, L. 1979.**

72-14-402. Claim for money deposited in county treasury. When any person appears and claims the money paid into the county treasury, the district court of such county must inquire into such claim and, if satisfied of his right thereto, must make an order to that effect, and upon presentation of the order, the treasurer must draw his warrant on the special fund for the amount to which claimant is entitled.

History: **En. Sec. 2, Ch. 128, L. 1947; R.C.M. 1947, 91-525.**

72-14-403. Deposit of unclaimed property in state treasury — escheat. (1) All money or other property distributed in the administration of an estate of a decedent or as the subject of a trust and deposited before or after July 1, 1947, with the county treasurer to the credit of the distributee or beneficiary and any money remaining on deposit to the credit of an estate after final distribution must be delivered into the state treasury for deposit in the agency fund by the county treasurer upon the expiration of 1 year from the day of such deposit.

(2) Money or other property so deposited in the state treasury, if not claimed by the person or persons entitled thereto by bringing an action as provided in part 3 of this chapter, shall escheat to the state of Montana and be placed in the public school nonexpendable trust fund as provided therein.

History: En. Sec. 3, Ch. 128, L. 1947; amd. Sec. 117, Ch. 147, L. 1963; R.C.M. 1947, 91-526; amd. Sec. 12, Ch. 628, L. 1979; amd. Sec. 32, Ch. 281, L. 1983.

CHAPTER 15

PUBLIC ADMINISTRATOR

Part 1 — Powers and Duties in Acquisition of Estates

72-15-101. Other provisions to supplement chapter.
72-15-102. When public administrator to take charge of estate.
72-15-103. Requirement to procure letters of administration — bond and oath.
72-15-104. Duty to commence actions for recovery of property.
72-15-105. Duty of persons in whose house stranger dies — notification to public administrator.
72-15-106. Civil officers to notify public administrator of property in danger of loss or waste.
72-15-107. Power to require persons controlling property to furnish statement describing property.
72-15-108. Refusal to furnish statement — misdemeanor.
72-15-109. Order to examine person in possession or charged with misappropriation of estate.
72-15-110. Refusal to be examined — civil contempt.

Part 2 — Powers and Duties in Administration

72-15-201. Duty to make out inventory, administer, and account.
72-15-202. Duty to deliver up estate when letters granted to another.
72-15-203. Power of court to order account and delivery of estate at any time.
72-15-204. Duty to keep register.
72-15-205. Deposit of moneys with county treasurer — withdrawals for administrative costs — investment.
72-15-206. Monthly settlement of accounts.
72-15-207. Annual account of condition of all estates.
72-15-208. Power of court to require additional report or bond.
72-15-209. Power of public administrator to administer oaths.
72-15-210. Fees — how paid.
72-15-211. Conflict of interest prohibited — affidavit.
72-15-212. Final settlement of estate — sale of property — escheat.
72-15-213. Wrongful failure of public administrator to deposit moneys — action on bond.

Part 3 — Compensation—Termination of Office

72-15-301. Compensation of public administrator.
72-15-302. Retiring public administrator may close pending estates.
72-15-303. Accounting and surrender of pending estates on retirement of public administrator.
72-15-304. Adjustment of compensation.

Chapter Cross-References

Office of Public Administrator, 7-4-3004.

Part 1

Powers and Duties in Acquisition of Estates

72-15-101. Other provisions to supplement chapter. When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of his duties or for the administration of an estate in his hands, the provisions of this title must govern.

History: En. Sec. 350, p. 330, L. 1877; re-en. Sec. 350, 2nd Div. Rev. Stat. 1879; re-en. Sec. 350, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4528, Pol. C. 1895; re-en. Sec. 3091, Rev.

C. 1907; re-en. Sec. 10008, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1743; re-en. Sec. 10008, R.C.M. 1935; R.C.M. 1947, 91-619; amd. Sec. 18, Ch. 6, L. 1979.

72-15-102. When public administrator to take charge of estate. (1) Every public administrator duly elected, commissioned, and qualified must take charge of estates of persons dying within his county as follows:

(a) of estates of decedents for which no administrators are appointed and which, in consequence thereof, are being wasted, uncared for, or lost;

(b) of estates of decedents who have no known heirs;

(c) of estates ordered into his hands by the court; and

(d) of estates upon which letters of administration have been issued to him by the court.

(2) However, it shall be unlawful for any public administrator of any county of the state of Montana to file any petition for the issuance to him as such public administrator of letters of administration of the estate of any decedent until at least 30 days have elapsed from the day of the death of any such decedent, unless it is affirmatively shown and made to appear in and by any such petition for letters of administration that there are no known heirs of such decedent or that all of the known heirs of such decedent reside outside of the state of Montana and that the estate of such decedent consists of property of such a nature that it will be lost, wasted, or depreciated in value unless cared for and administered upon at once.

History: En. Sec. 333, p. 326, L. 1877; re-en. Sec. 333, 2nd Div. Rev. Stat. 1879; re-en. Sec. 333, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4510, Pol. C. 1895; re-en. Sec. 3073, Rev. C. 1907; re-en. Sec. 9990, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1726; re-en. Sec. 9990, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1941; R.C.M. 1947, 91-601.

Cross-References

Power of Court to require additional report or bond, 72-15-208.

72-15-103. Requirement to procure letters of administration — bond and oath. (1) Whenever a public administrator takes charge of an estate under order of the court, he must with all convenient dispatch procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons.

(2) His official bond and oath are in lieu of a personal representative's bond and oath, but when real estate is ordered to be sold, another bond may be required by the court.

History: En. Sec. 334, p. 326, L. 1877; re-en. Sec. 334, 2nd Div. Rev. Stat. 1879; re-en. Sec. 334, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4511, Pol. C. 1895; re-en. Sec. 3074, Rev. C. 1907; re-en. Sec. 9991, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1727; re-en. Sec. 9991, R.C.M. 1935; amd. Sec. 4, Ch. 263, L. 1975; R.C.M. 1947, 91-602.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-15-104. Duty to commence actions for recovery of property. The public administrator must institute all actions and prosecutions necessary to recover the property, debts, papers, or other estate of the decedent.

History: En. Sec. 339, p. 327, L. 1877; re-en. Sec. 339, 2nd Div. Rev. Stat. 1879; re-en. Sec. 339, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4516, Pol. C. 1895; re-en. Sec. 3079, Rev. C. 1907; re-en. Sec. 9996, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1732; re-en. Sec. 9996, R.C.M. 1935; R.C.M. 1947, 91-607.

72-15-105. Duty of persons in whose house stranger dies — notification to public administrator. Whenever a stranger or person without known heirs dies intestate in the house or premises of another, the possessor of such premises or anyone knowing the facts must give immediate notice thereof to the public administrator of the county; in default of so doing, he is liable for any damage that may be sustained thereby, to be recovered by the public administrator or any person interested.

History: En. Sec. 335, p. 326, L. 1877; re-en. Sec. 335, 2nd Div. Rev. Stat. 1879; re-en. Sec. 335, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4512, Pol. C. 1895; re-en. Sec. 3075, Rev. C. 1907; re-en. Sec. 9992, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1728; re-en. Sec. 9992, R.C.M. 1935; R.C.M. 1947, 91-603.

72-15-106. Civil officers to notify public administrator of property in danger of loss or waste. All civil officers must inform the public administrator of all property known to them belonging to a decedent which is liable to loss, injury, or waste and which, by reason thereof, ought to be in the possession of the public administrator.

History: En. Sec. 338, p. 327, L. 1877; re-en. Sec. 338, 2nd Div. Rev. Stat. 1879; re-en. Sec. 338, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4515, Pol. C. 1895; re-en. Sec. 3078, Rev. C. 1907; re-en. Sec. 9995, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1731; re-en. Sec. 9995, R.C.M. 1935; R.C.M. 1947, 91-606.

72-15-107. Power to require persons controlling property to furnish statement describing property. Whenever any person dies in any county of this state and no administrator has been appointed to take charge of his estate, the public administrator of such county, prior to the issuance of letters of administration to him, shall have authority to make a written demand upon any person, firm, bank, or corporation, which he believes holds or has in its possession or control any money, evidence of indebtedness, or other personal property or which owes to such deceased person any money, to furnish to him a written statement, under oath, showing the amount of money or the evidence of indebtedness or personal property of such deceased person held by it fully describing the same and the total sums of money, if any, due from it to such deceased person. Upon receipt of such written demand, the person, firm, bank, or corporation receiving the same shall immediately furnish, under oath, to such public administrator said statement.

History: En. Sec. 1, Ch. 134, L. 1909; re-en. Sec. 10010, R.C.M. 1921; re-en. Sec. 10010, R.C.M. 1935; R.C.M. 1947, 91-621.

72-15-108. Refusal to furnish statement — misdemeanor. Any person, firm, bank, or corporation or officer, agent, or employee thereof refusing upon demand to furnish the statement as required by 72-15-107 shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 134, L. 1909; re-en. Sec. 10011, R.C.M. 1921; re-en. Sec. 10011, R.C.M. 1935; R.C.M. 1947, 91-622.

Cross-References

Penalty when none specified, 46-18-212.

72-15-109. Order to examine person in possession or charged with misappropriation of estate. When the public administrator complains to the district court or a judge thereof, on oath, that any person has concealed, committed theft of, or disposed of or has in his possession any money, goods, property, or effects to the possession of which such administrator is entitled in his official capacity, the court or judge may cite such person to appear and may examine him on oath touching the matter of such complaint.

History: **En. Sec. 340, p. 328, L. 1877; re-en. Sec. 340, 2nd Div. Rev. Stat. 1879; re-en. Sec. 340, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4517, Pol. C. 1895; re-en. Sec. 3080, Rev. C. 1907; re-en. Sec. 9997, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1733; re-en. Sec. 9997, R.C.M. 1935; amd. Sec. 65, Ch. 359, L. 1977; R.C.M. 1947, 91-608.**

72-15-110. Refusal to be examined — civil contempt. All such interrogatories and answers must be reduced to writing and signed by the party examined and filed in the court. If the person so cited refuses to appear and submit to such examination or to answer such interrogatories as may be put to him touching the matter of such complaint, the court or judge may commit him to the county jail, there to remain in close custody until he submits to the order of the court or judge.

History: **En. Sec. 341, p. 328, L. 1877; re-en. Sec. 341, 2nd Div. Rev. Stat. 1879; re-en. Sec. 341, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4518, Pol. C. 1895; re-en. Sec. 3081, Rev. C. 1907; re-en. Sec. 9998, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1734; re-en. Sec. 9998, R.C.M. 1935; R.C.M. 1947, 91-609.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

Part 2

Powers and Duties in Administration

72-15-201. Duty to make out inventory, administer, and account. The public administrator must make out and return an inventory of all estates taken into his possession and administer and account for the same according to the provisions of this chapter, subject to the control and directions of the court.

History: **En. Sec. 336, p. 326, L. 1877; re-en. Sec. 336, 2nd Div. Rev. Stat. 1879; re-en. Sec. 336, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4513, Pol. C. 1895; re-en. Sec. 3076, Rev. C. 1907; re-en. Sec. 9993, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1729, re-en. Sec. 9993, R.C.M. 1935; R.C.M. 1947, 91-604.**

72-15-202. Duty to deliver up estate when letters granted to another. If at any time letters testamentary or of administration are regularly granted to any other person on the estate of which the public administrator has charge, he must, under order of the court, account for, pay, and deliver to the executor or administrator thus appointed all the money, property, papers, and estate of every kind in his possession or under his control.

History: **En. Sec. 337, p. 327, L. 1877; re-en. Sec. 337, 2nd Div. Rev. Stat. 1879; re-en. Sec. 337, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4514, Pol. C. 1895; re-en. Sec. 3077, Rev. C. 1907; re-en. Sec. 9994, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1730; re-en. Sec. 9994, R.C.M. 1935; R.C.M. 1947, 91-605.**

72-15-203. Power of court to order account and delivery of estate at any time. The court or judge may, at any time, order the public administrator to account for and deliver all the money of an estate in his hands to the heirs or to the executors or administrators regularly appointed.

History: **En. Sec. 342, p. 328, L. 1877; re-en. Sec. 342, 2nd Div. Rev. Stat. 1879; re-en. Sec. 342, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4519, Pol. C. 1895; re-en. Sec. 3082, Rev. C. 1907; re-en. Sec. 9999, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1735; re-en. Sec. 9999, R.C.M. 1935; R.C.M. 1947, 91-610.**

72-15-204. Duty to keep register. It is the duty of the public administrator to keep a book to be labeled "Register of Public Administrator" in which he must enter:

(1) the name of every deceased person on whose estate he administers;
(2) the date of granting letters;
(3) money received;
(4) the property and its value;
(5) proceeds of all sales of property;
(6) the amount of his fees;
(7) the expenses of administration;
(8) the amount of the estate after all charges and expenses have been paid;
(9) the disposition of the property on distribution;
(10) the date of discharge of administrator; and
(11) such other matters as may be necessary to give a full and complete history of each estate administered by him.

History: En. Sec. 4529, Pol. C. 1895; re-en. Sec. 3092, Rev. C. 1907; re-en. Sec. 10009, R.C.M. 1921; re-en. Sec. 10009, R.C.M. 1935; R.C.M. 1947, 91-620.

Cross-References

Public records, Title 2, ch. 6.

72-15-205. Deposit of moneys with county treasurer — withdrawals for administrative costs — investment. (1) It is the duty of every public administrator, as soon as he receives the same, to deposit with the county treasurer of the county in which probate proceedings are pending all moneys of the estate, and such moneys may be drawn upon the order of the personal representative, countersigned by a district judge, when required for the purposes of administration.

(2) It is the duty of the county treasurer to receive and safely keep all such moneys and pay them out upon the order of the personal representative, when countersigned by a district judge and not otherwise, and to keep an account with such estate of all moneys received and paid to him; and for the safekeeping and payment of all such moneys, as herein provided, the treasurer and his sureties are liable upon his official bond.

(3) The moneys thus deposited may, upon order of the court or judge, be invested pending the proceedings in securities of the United States or of this state when such investment is for the best interests of the estate.

History: En. Sec. 344, p. 329, L. 1877; re-en. Sec. 344, 2nd Div. Rev. Stat. 1879; re-en. Sec. 344, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4521, Pol. C. 1895; re-en. Sec. 3084, Rev. C. 1907; re-en. Sec. 10001, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1737; amd. Sec. 1, Ch. 119, L. 1929; amd. Sec. 1, Ch. 76, L. 1931; re-en. Sec. 10001, R.C.M. 1935; amd. Sec. 14, Ch. 365, L. 1974; R.C.M. 1947, 91-612(part).

72-15-206. Monthly settlement of accounts. The public administrator is required to account and to settle and adjust his accounts, relating to the care and disbursement of money or property belonging to estates in his hands, with the clerk of the district court on the first Monday of each month, and he must pay to the county treasurer any money remaining in his hands of an estate unclaimed.

History: En. Sec. 346, p. 329, L. 1877; re-en. Sec. 346, 2nd Div. Rev. Stat. 1879; re-en. Sec. 346, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4523, Pol. C. 1895; re-en. Sec. 3086, Rev. C. 1907; re-en. Sec. 10003, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1739; re-en. Sec. 10003, R.C.M. 1935; amd. Sec. 5, Ch. 263, L. 1975; R.C.M. 1947, 91-614.

72-15-207. Annual account of condition of all estates. (1) The public administrator must once each year make to the district court or a judge thereof, under oath, a return of all estates of decedents which have come into his hands stating:

(a) the value of the same;
(b) the money which has come into his hands from each estate;
(c) what he has done with it;
(d) the amount of his fees and expenses incurred;
(e) the balance, if any, remaining in his hands.

(2) He must post a copy of the same in the office of the clerk of the district court of the county.

History: En. Sec. 343, p. 329, L. 1877; re-en. Sec. 343, 2nd Div. Rev. Stat. 1879; re-en. Sec. 343, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4520, Pol. C. 1895; re-en. Sec. 3083, Rev. C. 1907; re-en. Sec. 10000, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1736; re-en. Sec. 10000, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1939; R.C.M. 1947, 91-611.

72-15-208. Power of court to require additional report or bond. The court or judge may, at any time, require the public administrator to report the amount of moneys and property of any estate in his hands and may require him at any time to file additional bond or bonds.

History: En. Sec. 4527, Pol. C. 1895; re-en. Sec. 3090, Rev. C. 1907; re-en. Sec. 10007, R.C.M. 1921; re-en. Sec. 10007, R.C.M. 1935; R.C.M. 1947, 91-618.

Cross-References
Suretyship, Title 28, ch. 11, part 4.

72-15-209. Power of public administrator to administer oaths. Public administrators may administer oaths in regard to all matters touching the discharge of their duties or the administration of estates in their hands.

History: En. Sec. 349, p. 330, L. 1877; re-en. Sec. 349, 2nd Div. Rev. Stat. 1879; re-en. Sec. 349, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4526, Pol. C. 1895; re-en. Sec. 3089, Rev. C. 1907; re-en. Sec. 10006, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1742; re-en. Sec. 10006, R.C.M. 1935; R.C.M. 1947, 91-617.

Cross-References
Officers who may administer oaths, 1-6-101.

72-15-210. Fees — how paid. The fees of all officers chargeable to estates in the hands of public administrators must be paid out of the assets thereof, as soon as the same come into his hands.

History: En. Sec. 348, p. 330, L. 1877; re-en. Sec. 348, 2nd Div. Rev. Stat. 1879; re-en. Sec. 348, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4525, Pol. C. 1895; re-en. Sec. 3088, Rev. C. 1907; re-en. Sec. 10005, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1741; re-en. Sec. 10005, R.C.M. 1935; R.C.M. 1947, 91-616.

Cross-References
Compensation of Public Administrator, 72-15-301.

72-15-211. Conflict of interest prohibited — affidavit. The public administrator must not be interested in the expenditures of any kind made on account of any estate he administers; nor must he be associated, in business or otherwise, with anyone who is so interested; and he must attach to his report and publication, made in accordance with 72-15-207, his affidavit to that effect.

History: En. Sec. 345, p. 329, L. 1877; re-en. Sec. 345, 2nd Div. Rev. Stat. 1879; re-en. Sec. 345, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4522, Pol. C. 1895; re-en. Sec. 3085, Rev.

C. 1907; re-en. Sec. 10002, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1738; re-en. Sec. 10002, R.C.M. 1935; R.C.M. 1947, 91-613.

72-15-212. Final settlement of estate — sale of property — escheat. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall credit the same and all other moneys belonging to said estate to the escheated estates fund, and the county treasurer shall forthwith remit all of said money to the department of revenue with a statement as to the estates to which the money belongs, which remittance shall be treated as provided in chapter 14, as amended.

History: En. Sec. 344, p. 329, L. 1877; re-en. Sec. 344, 2nd Div. Rev. Stat. 1879; re-en. Sec. 344, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4521, Pol. C. 1895; re-en. Sec. 3084, Rev. C. 1907; re-en. Sec. 10001, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1737; amd. Sec. 1, Ch. 119, L. 1929; amd. Sec. 1, Ch. 76, L. 1931; re-en. Sec. 10001, R.C.M. 1935; amd. Sec. 14, Ch. 365, L. 1974; R.C.M. 1947, 91-612(part).

72-15-213. Wrongful failure of public administrator to deposit moneys — action on bond. When it appears from the returns made in pursuance of the foregoing sections that any money remains in the hands of the public administrator after final settlement of the estate unclaimed which should be paid over to the county treasurer, the court or judge must order the same paid over to the county treasurer; and on failure of the public administrator to comply with the order within 10 days after the same is made, the county attorney must immediately institute the requisite proceedings against the public administrator for a judgment against him and the sureties on his official bond, in the amount of the money so withheld and costs.

History: En. Sec. 347, p. 330, L. 1877; re-en. Sec. 347, 2nd Div. Rev. Stat. 1879; re-en. Sec. 347, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4524, Pol. C. 1895; re-en. Sec. 3087, Rev. C. 1907; re-en. Sec. 10004, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1740; re-en. Sec. 10004, R.C.M. 1935; R.C.M. 1947, 91-615.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Part 3

Compensation — Termination of Office

72-15-301. Compensation of public administrator. (1) The public administrator shall receive and collect for his own use as full compensation for his services under this chapter, including attorney's fees, the amounts provided for in 72-3-631 and 72-3-633.

(2) When the public administrator is appointed conservator of the estate of a protected person pursuant to chapter 5, part 4, of this title, the court may order that a reasonable sum be deducted from payments due to the protected person or from his estate to be paid to the public administrator as full compensation for his services, excluding court costs and attorney's fees. The total sum deducted as compensation for the public administrator may not exceed 2 ½% of the annual periodic payments or $100, whichever is less.

History: Ap. p. Sec. 8, Ch. 134, L. 1909; re-en. Sec. 10017, R.C.M. 1921; re-en. Sec. 10017, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1969; amd. Sec. 6, Ch. 263, L. 1975; Sec. 91-628, R.C.M. 1947; Ap. p. Sec. 4641, Pol. C. 1895; re-en. Sec. 3174, Rev. C. 1907; re-en. Sec. 4923, R.C.M. 1921; re-en. Sec. 4923, R.C.M. 1935; amd. Sec. 2, Ch. 263, L. 1975; Sec. 25-237, R.C.M.

1947; R.C.M. 1947, 25-237, 91-628; amd. Sec. 2, Ch. 424, L. 1979; amd. Sec. 6, Ch. 362, L. 1985.

72-15-302. Retiring public administrator may close pending estates. The public administrator, upon the expiration or termination of his term of office, may continue to administer estates not closed by filing and presenting to the court a full and complete account pertaining to each estate not closed and securing an order of court granting him letters of administration and qualifying himself as a personal representative.

History: En. Sec. 1, Ch. 4, L. 1941; amd. Sec. 7, Ch. 263, L. 1975; R.C.M. 1947, 91-629.

72-15-303. Accounting and surrender of pending estates on retirement of public administrator. Should said public administrator, upon the expiration or termination of his office and within 60 days thereafter, fail to qualify as general administrator of estates not yet closed, he shall, upon demand of his successor to such office or voluntarily if he desires to be relieved from further performance of the trust, surrender to said successor all estates not closed and property belonging to such estates, having first filed and presented to the court for approval a full and complete account pertaining to such estate not closed.

History: En. Sec. 2, Ch. 4, L. 1941; R.C.M. 1947, 91-630.

72-15-304. Adjustment of compensation. The court shall determine and allow such predecessor in office for his services rendered in connection with estates not closed a compensation based upon the commission prescribed and allowed by law in proportion to the services necessarily rendered and those necessary to be rendered by such successor in closing up such estates. Such successor shall thereupon be allowed and paid the balance of such commission allowed.

History: En. Sec. 3, Ch. 4, L. 1941; amd. Sec. 8, Ch. 263, L. 1975; R.C.M. 1947, 91-631.

CHAPTER 16

INHERITANCE AND ESTATE TAXES

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Chapter Cross-References

Disposition of inheritance and estate taxes, 15-1-501.

Part 1

General Provisions

72-16-101. Definitions. In parts 1 through 8, the following definitions apply:

(1) The words "county treasurer", "public administrator", and "county attorney" shall be taken to mean the treasurer, public administrator, and county attorney of the county in which the district court has jurisdiction of the proceedings.

(2) The word "decedent" shall include the testator, intestate, grantor, bargainor, vendor, or donor.

(3) The words "estate" and "property" shall be taken to mean the real and personal property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees and not as the property or interest therein of the decedent, grantor, donor, or vendor and shall include all personal property within or without the state.

(4) "Intangible" or "intangible property", when used without other qualifications, shall be taken to include all moneys, stocks, bonds, notes, securities, and credits of all kinds, secured or unsecured.

(5) The terms "joint" and "jointly" refer to ownership of property by two or more persons having as one of the incidents of such ownership the right of survivorship in the surviving owner or owners upon the death of one of the owners. This definition does not affect the concept of property owned as tenants in common, and this type of ownership shall continue to be recognized where applicable.

(6) The word "transfer" shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein prescribed to each individual or corporation.

History: **En. Sec. 22, Ch. 65, L. 1923; re-en. Sec. 10400.43, R.C.M. 1935; amd. Sec. 7, Ch. 490, L. 1977; R.C.M. 1947, 91-4453.**

72-16-102. Jurisdiction. (1) The district court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws or to appoint a trustee of such estate or any part thereof or to give ancillary letters thereon shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws and to do any act in relation thereto authorized by law to be done by a district court in other matters or proceedings coming within its jurisdiction.

(2) If two or more district courts shall be entitled to exercise any such jurisdiction, the district court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other district court.

History: **En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.13, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1951; amd. Sec. 81, Ch. 391, L. 1973; amd. Sec. 6, Ch. 365, L. 1974; R.C.M. 1947, 91-4423.**

Part 2

Powers and Duties of State Officers and Agencies

72-16-201. Powers of department generally — duty to supervise administration of tax laws — reports. (1) The department of revenue in the conduct of inheritance tax affairs has the same powers for gathering information and making investigations as is conferred by law on the department in the performance of its other duties.

(2) The department shall supervise the administration of the inheritance tax laws and investigate such particular estates to which the inheritance tax laws apply throughout the various counties of the state and cause to be made and filed in its office reports of such investigations, together with specific information and facts as to particular estates, that may seem to require special consideration and attention by the department of justice; but no information so acquired may, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate.

History: **En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Secs. 10400.34, 10400.35, R.C.M. 1935; amd. Secs. 95, 96, Ch. 391, L. 1973; R.C.M. 1947, 91-4444, 91-4445(part); amd. Sec. 19, Ch. 6, L. 1979.**

Cross-References

Tax administration — Department of Revenue, Title 15, ch. 1, part 2.

Tax administration — investigation and hearings, Title 15, ch. 1, part 3.

72-16-202. Report to governor and legislature. The department of revenue shall biennially report the general result of its labors and investigations in inheritance tax matters during the previous biennial period, together with specific reports of the several counties where the administration of the inheritance tax laws has been lax and unsatisfactory, with recommendations for action by the legislature as the department considers advisable and proper.

The report required in this section must be consolidated with and made a part of the biennial report submitted by the department of revenue under 15-1-205.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.35, R.C.M. 1935; amd. Sec. 96, Ch. 391, L. 1973; R.C.M. 1947, 91-4445(part); amd. Sec. 46, Ch. 112, L. 1991; amd. Sec. 40, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 near beginning of first sentence, after "report", deleted "to the governor and, as provided in 5-11-210, to the legislature" and inserted second sentence requiring consolidation with the biennial report; and made minor changes in style.

72-16-203. Employment of assistants by department. The department of revenue may employ such other persons as experts and assistants as may be necessary to perform the duties that may be required of the department and fix their compensation.

History: En. Sec. 24, Ch. 65, L. 1923; re-en. Sec. 10400.45, R.C.M. 1935; amd. Sec. 103, Ch. 391, L. 1973; R.C.M. 1947, 91-4454.

72-16-204. Subpoena and discovery powers — contempt. (1) Oaths to witnesses in any matter under the investigation or consideration of the department of revenue may be administered by the director of revenue or his appointed agents.

(2) In case any witness shall fail to obey any summons to appear before the department or shall refuse to testify or answer any material questions or to produce records, books, papers, or documents, when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the department or to punish witnesses for any such neglect or refusal.

History: En. Sec. 25, Ch. 65, L. 1923; re-en. Sec. 10400.46, R.C.M. 1935; amd. Sec. 104, Ch. 391, L. 1973; R.C.M. 1947, 91-4455(part).

72-16-205. Compensation of witnesses and officers serving subpoenas. In the discretion of the department of revenue, officers who serve summons or subpoenas and witnesses attending shall receive like compensation as officers and witnesses in the district court.

History: En. Sec. 25, Ch. 65, L. 1923; re-en. Sec. 10400.46, R.C.M. 1935; amd. Sec. 104, Ch. 391, L. 1973; R.C.M. 1947, 91-4455(part).

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

72-16-206. Perjury. Any person who shall testify falsely in any material manner under the consideration of the department of revenue shall be guilty of and punished for perjury.

History: En. Sec. 25, Ch. 65, L. 1923; re-en. Sec. 10400.46, R.C.M. 1935; amd. Sec. 104, Ch. 391, L. 1973; R.C.M. 1947, 91-4455(part).

Cross-References

Perjury, 45-7-201.

72-16-207. Forms and blanks — department to furnish. The department of revenue shall prescribe such forms and prepare such blanks as may be necessary in inheritance tax proceedings, and such blanks shall be printed at the expense of the state and furnished to each district court or the clerk thereof upon the request of the judge or clerk thereof.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.38, R.C.M. 1935; amd. Sec. 99, Ch. 391, L. 1973; amd. Sec. 10, Ch. 365, L. 1974; R.C.M. 1947, 91-4448.

72-16-208. Powers and duties of department as to nonresident estates. The department of revenue shall also gather information and make investigations and reports concerning the estates of nonresident decedents within the provisions of the inheritance tax laws and shall especially investigate the probate and other records for such probable estates without the state and report thereon from time to time to the department of justice and to the proper district court for appropriate legal action; but no information so acquired may, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.36, R.C.M. 1935; amd. Sec. 97, Ch. 391, L. 1973; R.C.M. 1947, 91-4446; amd. Sec. 20, Ch. 6, L. 1979.

72-16-209. Power of composition and compromise in certain cases. (1) The department of revenue is authorized to enter into an agreement with the executor, administrator, or trustee of any estate in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the taxes therein were held not presently payable or where the interests of the legatees or devisees are not ascertainable under the provisions of parts 1 through 8 or whenever a tax is claimed on account of the transfer of any property of a nonresident decedent and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators, or trustees upon the payment of the taxes provided for in such composition. However, no such composition shall be conclusive in favor of such executors, administrators, or trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment or fixed, absolute, or indefeasible rights of future enjoyment or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally when competent or by guardian.

(2) Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy shall be filed in the office of the clerk of the district court of the county in which the tax was paid; one copy to be delivered to the executors, administrators, or trustees, who shall be parties thereto, and one copy to be retained by the department of revenue.

(3) In every estate in which the amount of inheritance tax collectible shall exceed or probably exceed the sum of $1,000, there shall be no compounding, composition, or settlement of the taxes under the authority conferred by this section or otherwise, until the department of revenue shall have investigated such estate and made a report thereon or until the department consents to such compounding, compromise, or settlement.

History: (1), (2)En. Sec. 20, Ch. 65, L. 1923; re-en. Sec. 10400.41, R.C.M. 1935; amd. Sec. 102, Ch. 391, L. 1973; Sec. 91-4451, R.C.M. 1947; (3)En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.37, R.C.M. 1935; amd. Sec. 98, Ch. 391, L. 1973; Sec. 91-4447, R.C.M. 1947; R.C.M. 1947, 91-4447(part), 91-4451.

72-16-210. Duty of justice department. The department of justice shall carry out and enforce the recommendations and directions of the department of revenue in all matters pertaining to the conduct of inheritance tax affairs.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.37, R.C.M. 1935; amd. Sec. 98, Ch. 391, L. 1973; R.C.M. 1947, 91-4447(part); amd. Sec. 21, Ch. 6, L. 1979.

72-16-211. Public administrator — duty to investigate concerning tax — compensation generally. (1) It shall be the duty of the public administrator, under the general supervision of the department of revenue and with the assistance of the county attorney, when required by the department or district judge, to investigate the estates of deceased persons within his county and to appear for and act in behalf of the county and state in the district court in such estates as the court may in its discretion deem necessary.

(2) For such services the public administrator shall be entitled to 5% of the gross inheritance tax as determined in each such estate, to be paid by the county treasurer out of the inheritance tax funds upon an order of the district judge, provided that the minimum fee for each such estate shall not be less than $5 and that it shall not exceed $25; but in cases of unusual difficulty in estates of resident decedents where the tax exceeds $500, the district judge may allow the public administrator such additional compensation as he may deem just and reasonable.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.43, R.C.M. 1935; amd. Sec. 94, Ch. 391, L. 1973; R.C.M. 1947, 91-4443.

72-16-212. Power of public administrator or other to seek administration when no application made. When no application for administration of the estate of any deceased person is made within 6 months after the demise of such person and such estate appears to come under the provisions of the inheritance tax laws or when administration has been completed without determining the tax, the public administrator of the proper county or any person interested in such estate may make application for such special or general administration as may be necessary for the purpose of the adjustment and payment of such tax, if any, or if no tax is due, for an order determining that fact.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.31, R.C.M. 1935; R.C.M. 1947, 91-4441(part).

72-16-213. Public administrator — duty as to transfer made in contemplation of death without payment of tax. Where it appears that the estate of a deceased person subject to the inheritance tax laws was transferred in contemplation of the death of the grantor without the adjustment and payment of the inheritance taxes and no application for such adjustment is made within 6 months after the demise of such grantor, the public administrator of the proper county shall notify the department of revenue and on its order make application for and shall be entitled to such general or special administration as may be necessary for the purpose of the adjustment and payment of the inheritance taxes provided by law and shall administer such estate the same as other estates are administered as though such estate had not been transferred by the grantor.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.32, R.C.M. 1935; amd. Sec. 93, Ch. 391, L. 1973; R.C.M. 1947, 91-4442.

72-16-214. Public administrator — compensation under special provisions. In cases arising under 72-16-212 and 72-16-213, the public administrator, if appointed such special administrator, shall be entitled in the discretion of the court to the fees allowed by law to administrators or to other reasonable compensation, unless it be found that no tax is due.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.31, R.C.M. 1935; R.C.M. 1947, 91-4441(part).

72-16-215. County treasurer — monthly report — payment of collections to state treasurer — interest on unpaid amounts. Between the 1st and 20th days of each month, each county treasurer shall make a report under oath to the department of revenue listing all payments received by him under the inheritance tax laws during the preceding month and stating for what estate, by whom, and when paid. The form of such report shall be prescribed by the department. He shall at the same time pay the state treasurer all the payments received by him under the inheritance tax laws and not previously paid to the state treasurer, and for all such payments collected by him and not paid to the state treasurer within 5 days from the time herein required, he shall pay interest at the rate of 10% per annum.

History: En. Sec. 19, Ch. 65, L. 1923; amd. Sec. 7, Ch. 150, L. 1925; re-en. Sec. 10400.40, R.C.M. 1935; amd. Sec. 2, Ch. 36, L. 1971; amd. Sec. 101, Ch. 391, L. 1973; R.C.M. 1947, 91-4450; amd. Sec. 3, Ch. 361, L. 1987.

Cross-References

Settlement of County Treasurer with State Treasurer, 15-1-504.

72-16-216. Clerk of court — duty to furnish copies of filed documents. It shall be the duty of the clerk of the district court to furnish to the department of revenue copies of such documents filed in connection with probate matters as the department may require.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.39, R.C.M. 1935; amd. Sec. 100, Ch. 391, L. 1973; R.C.M. 1947, 91-4449.

72-16-217. List of deaths to be made by department of health — copy to county clerk. The department of health and environmental sciences shall prepare on or before the fifth of January, April, July, and October of each year a list of all deaths, together with the date of such death, reported to it during such period and shall send a copy of such list of deaths to the county clerk of each county in the state.

History: En. Sec. 2, Ch. 186, L. 1935; re-en. Sec. 10400.50, R.C.M. 1935; R.C.M. 1947, 91-4458.

72-16-218. County clerk to check records against list — report to department. (1) The county clerk, upon the receipt of the list of deaths provided for in 72-16-217, shall immediately check the records of his county to determine whether any of the deceased persons whose names appear upon such list may have made any transfer of property or of property rights within such county during the 3 years preceding the death of such person or whether such deceased person may have been possessed of any property in such county at the time of his death.

(2) If he shall find that any such deceased person may have made any such transfers of property or of property rights or have died possessed of such, he shall immediately transmit such information to the department of revenue.

History: **En. Sec. 3, Ch. 186, L. 1935; re-en. Sec. 10400.51, R.C.M. 1935; amd. Sec. 105, Ch. 391, L. 1973; R.C.M. 1947, 91-4459.**

Part 3

Application and Imposition of Tax — Exemptions and Rates — Property Valuation

72-16-301. Taxable transfers generally — contemplation of death. (1) A tax shall be and is hereby imposed upon any transfer of property, real, personal, or mixed, or any interest therein or income therefrom in trust or otherwise to any person, association, or corporation in the following cases, except as provided in this section:

(a) when the transfer is by will or by intestate laws of this state from any person dying possessed of the property while a resident of the state;

(b) when a transfer is by will or intestate law of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death; or

(c) when the transfer is of property made by a resident or by a nonresident when such nonresident's property is within the state or within its jurisdiction by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor or intended to take effect in possession or enjoyment at or after such death.

(2) No transfer made before the 3-year period ending on the date of the decedent's death shall be considered to have been made in contemplation of death.

(3) Every transfer during the 3-year period ending on the date of the decedent's death must be considered to have been made in contemplation of death, except:

(a) no transfer shown to be a bona fide sale for an adequate and full consideration in money or money's worth may be considered to be a gift made in contemplation of death;

(b) if the transfer was a gift to a donee made during the calendar year and if the decedent was not required by section 6019 of the internal revenue code to file any gift tax return for the year with respect to the donee, the transfer may not be considered to be a gift made in contemplation of death.

(4) Subsection (3)(b) does not apply to any transfer with respect to a life insurance policy.

History: **Ap. p. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; Sec. 91-4401, R.C.M. 1947; (3)En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; amd. Sec. 1, Ch. 269, L. 1955; Sec. 91-4402, R.C.M. 1947; R.C.M. 1947, 91-4401(part), 91-4402; amd. Sec. 25, Ch. 582, L. 1989.**

Cross-References

Disposition of inheritance and estate taxes, 15-1-501.

72-16-302. Transfer under power of appointment. (1) To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment, such property shall be considered to have been transferred in a transfer taxable under the provisions of parts 1 through 8, whether or not the decedent exercised the power of appointment.

(2) The term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, except that a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent may not be considered a general power of appointment.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4404; amd. Sec. 26, Ch. 582, L. 1989.

72-16-303. Joint estates — transfer by right of survivorship taxable. (1) Whenever any property is held by two or more persons in joint tenancy with right of survivorship, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer.

(2) The tax is on the full value of the property held as joint tenants with right of survivorship, except a part of the property as may be shown to have originally belonged to the survivor or survivors and never to have been received or acquired by the latter from the decedent for less than adequate and full consideration in money or money's worth. When the property or any part of the property, or part of the consideration with which the property was acquired, is shown to have been at any time acquired by the other person from the decedent for less than an adequate and full consideration in money or money's worth, only the part of the value of the property as is proportionate to the consideration furnished by the other person may be excepted. When any property has been acquired by gift, bequest, devise, or inheritance as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, the tax is on the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1951; amd. Sec. 1, Ch. 490, L. 1977; R.C.M. 1947, 91-4405; amd. Sec. 1, Ch. 636, L. 1979; amd. Sec. 27, Ch. 582, L. 1989.

Cross-References

Joint interest defined, 70-1-307.

72-16-304. Insurance proceeds part of estate — exemption. All insurance payable upon the death of any person over and above $50,000 shall be deemed a part of the property and estate passing to the person or persons entitled to receive the same and, if payable to more than one person, the $50,000 exemption shall be prorated between such persons in proportion to the amount of insurance payable to each.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4406.

Cross-References

Life insurance, Title 33, ch. 20.

72-16-305. Bequests to executors or trustees — when taxable. If a testator bequeaths property to one or more executors or trustees in lieu of their commissions or allowances or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed, above the amount of commissions or allowances prescribed by law in similar cases, shall be taxable by parts 1 through 8.

History: En. Sec. 10, Ch. 65, L. 1923; re-en. Sec. 10400.10, R.C.M. 1935; R.C.M. 1947, 91-4420.

72-16-306. Recording date prima facie date of transfer — transfers recorded after death. Recorded papers evidencing a transfer of property, real, personal, or mixed, or of any interest therein coming within the provisions of parts 1 through 8 are prima facie proof, for the purposes of parts 1 through 8, that it was made as of the date upon which such papers were recorded. Any such transfer, if recorded after the death of the person or persons making such transfer, whatever the form of such transfer, is considered, for the purposes of taxation under the provisions of parts 1 through 8, to have been made by will.

History: En. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4408; amd. Sec. 22, Ch. 6, L. 1979.

72-16-307. Tax — when imposed. The tax referred to in 72-16-301 shall be imposed when any person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer whether made before or after March 5, 1923.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4403(part).

72-16-308. Tax to be on clear market value — deductions allowed in determining value — valuation of certain farm and business property. (1) The tax so imposed shall be upon the clear market value of such property passing by any such transfer to each person, institution, association, corporation, or body politic at the rates hereinafter prescribed and only upon the excess of the exemption hereinafter granted to such person, institution, association, corporation, or body politic.

(2) In determining the clear market value of the property so passing by any such transfer, the following deductions and no other shall be allowed:

(a) debts of the decedent owing at the date of death, provided that any debt secured by decedent's joint interest in property and for which the decedent was jointly and severally liable is deductible only to the extent of one-half or other proper fraction representing decedent's share of the property;

(b) expenses of funeral and last illness;

(c) all Montana state, county, municipal, and federal taxes, including all penalties and interest thereon, owing by decedent at the date of death;

(d) the ordinary expenses of administration, including:

(i) the commissions and fees of executors and administrators and their attorneys actually allowed and paid;

(ii) attorneys' fees, filing fees, necessary expenses, and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of inheritance tax; and

(e) federal estate taxes due or paid.

(3) In determining clear market value, the valuation of certain farm and other real property may be made under 72-16-331 through 72-16-342.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1957; amd. Sec. 1, Ch. 232, L. 1959; R.C.M. 1947, 91-4407; amd. Sec. 1, Ch. 573, L. 1979; amd. Sec. 43, Ch. 705, L. 1979.

72-16-309 and 72-16-310 reserved.

72-16-311. Exemption — how taken. The exemption allowed to each person, institution, association, corporation, or body politic shall be taken as provided in 72-16-321.

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(1).

72-16-312. Exemption — transfers for charitable or public purposes. (1) The following transfers are totally exempt:

(a) all property transferred to the state or any of its institutions or to local governments within the state for strictly local government or other public purposes;

(b) all property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, if any of the following conditions is present:

(i) the society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

(ii) the property transferred is limited for use within this state;

(iii) the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country and at the date of the decedent's death any one of the following conditions existed:

(A) the other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

(B) the laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country;

(C) the society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are without discrimination gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(2) The tax imposed by 72-16-301 does not apply to transfers to corporations of this state organized under its laws or voluntary associations organized solely for religious, charitable, or educational purposes, which use the property so transferred exclusively for the purposes of their organization within the state.

History: (1)En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; Sec. 91-4414, R.C.M. 1947; (2)En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; Sec. 91-4401, R.C.M. 1947; R.C.M. 1947, 91-4401(part), 91-4414(2); amd. Sec. 23, Ch. 6, L. 1979.

72-16-313. Exemptions of spouse and other relatives. (1) The clear value of all property distributed or passing to a decedent's surviving spouse is exempt.

(2) The clear value of all property distributed or passing to the following is exempt:

(a) any child or lineal descendant of the decedent. A determination as to establishment of the parent and child relationship or establishment of a person as a lineal descendant must be made in accordance with the rules for determining relationship for purposes of intestate succession under Title 72, chapter 2, part 1.

(b) any stepchild, as defined in 72-2-613, of the decedent, provided the relationship began on or before the stepchild's 18th birthday.

(3) The following amounts are exempt:

(a) property of the clear value of $7,000 transferred to each of the persons who have attained majority described in 72-16-321(1); and

(b) property of the clear value of $1,000 transferred to each of the persons described in 72-16-321(2).

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(3), (4), (6); amd. Sec. 1, Ch. 696, L. 1979; amd. Sec. 1, Ch. 202, L. 1981; amd. Sec. 1, Ch. 223, L. 1991; amd. Sec. 81, Ch. 494, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted (2)(b) concerning a stepchild for former text that read: "any child to whom the decedent, prior to the transfer, stood in the mutually acknowledged relationship of a parent or stepparent, provided the relationship began on or before the child's 18th birthday".

72-16-314. Probate code allowances and exemptions not in addition to tax exemptions. The allowances and exempt property provided for in 72-2-412 through 72-2-414 are to be included in computing the exemptions from inheritance tax provided for in 72-16-313 and are not in addition to such inheritance tax exemptions.

History: En. 91A-2-405 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-405.

72-16-315. Discretionary waiver of inheritance tax of surviving spouse. Notwithstanding any provision of law or statute in conflict herewith, the department of revenue, in its discretion, is authorized to issue a waiver of inheritance tax in the event of the death of any person leaving any real property or personal property, or both, in joint tenancy with a surviving spouse, if the value of the property of the decedent is less than the inheritance exemption allowed by law to the surviving spouse.

History: En. Sec. 1, Ch. 147, L. 1969; amd. Sec. 76, Ch. 391, L. 1973; R.C.M. 1947, 91-4414.1.

72-16-316. Exemption of tangible personal property subject to tax in state of location — reciprocity. No tax may be imposed upon any tangible personal property of a resident decedent when such property is located without this state and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and the tax has actually been paid, secured, or guaranteed; provided such property is not without this state temporarily or for the sole purpose of deposit or safekeeping and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state.

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(7).

72-16-317. Credit allowance on inheritance taxes paid to other states. The tax imposed by this part and part 9 shall, as to a resident of the state of Montana who died domiciled in Montana, be credited with the amount of any valid inheritance, estate, legacy, or succession taxes actually paid to any state or territory of the United States (other than the state of Montana) or to the District of Columbia. However, the amount to be so credited shall in no event exceed that amount which the resident decedent was taxed on that property in Montana.

History: En. Sec. 1, Ch. 236, L. 1943; R.C.M. 1947, 91-4412.

72-16-318. Child's credit for tax paid by decedent's spouse. Any child of a decedent is entitled to credit for so much of the tax paid by the decedent's spouse as applied to any property which is thereafter transferred by or from such spouse to the child, provided the spouse does not survive the decedent to exceed 10 years.

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(5).

72-16-319. Exemption — transfer of the estate of member of armed forces dying from combat wounds. (1) The taxes imposed in 72-16-301 and 72-16-904 do not apply to the transfer of property owned by a resident of the United States dying while in active service as a member of the armed services of the United States, if such decedent:

(a) was killed in action while serving in a combat zone, as determined under section 112(c) of the Internal Revenue Code of 1954, as amended; or

(b) died as a result of wounds, disease, or injury suffered while serving in a combat zone and while in the line of duty, by reason of a hazard to which he was subjected as an incident of such service.

(2) The transfer of property from such a decedent to any person, association, or corporation is exempt from inheritance and estate taxes imposed in this chapter.

History: En. Sec. 1, Ch. 673, L. 1979.

Cross-References

Servicemen, servicewomen, and veterans, Art. II, sec. 35, Mont. Const.

72-16-320 reserved.

72-16-321. Primary rates — amount remaining after exemptions not in excess of twenty-five thousand dollars. The exemptions allowed by 72-16-311 through 72-16-316 shall be subtracted from the total value of property or beneficial interests transferred to any person, institution, association, corporation, or political entity by the decedent. A tax is imposed upon the first $25,000 in value of the remaining amount of the total value of property or beneficial interests at the following rates:

(1) at the rate of 2% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is the lineal ancestor of the decedent;

(2) at the rate of 4% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is:

(a) the brother or sister or a descendant of a brother or sister of the decedent;

(b) a wife of a son or the husband of a daughter of the decedent;

(3) at the rate of 6% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is the uncle, aunt, or first cousin of the decedent;

(4) at the rate of 8% of the clear value of the interest in property passing if the entity entitled to any beneficial interest in such property is:

(a) a person in any other degree of collateral consanguinity than is hereinbefore stated;

(b) a stranger in blood to the decedent; or

(c) a body politic or corporate.

History: En. Sec. 2, Ch. 65, L. 1923; amd. Sec. 1, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.2, R.C.M. 1935; amd. Sec. 2, Ch. 490, L. 1977; R.C.M. 1947, 91-4409; amd. Sec. 2, Ch. 696, L. 1979; amd. Sec. 2, Ch. 202, L. 1981.

72-16-322. Other rates — amount remaining after exemptions in excess of twenty-five thousand dollars. The rates in 72-16-321 are for convenience termed the primary rates. When the amount of the clear value of the remaining amount of the property or interests exceeds $25,000, the rate of tax upon such excess shall be as follows:

(1) upon all in excess of $25,000 and up to $50,000, two times the primary rate;

(2) upon all in excess of $50,000 and up to $100,000, three times the primary rate;

(3) upon all in excess of $100,000, four times the primary rate.

History: En. Sec. 3, Ch. 65, L. 1923; amd. Sec. 1, Ch. 141, L. 1927; amd. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3, R.C.M. 1935; amd. Sec. 3, Ch. 490, L. 1977; R.C.M. 1947, 91-4410.

72-16-323 through 72-16-330 reserved.

72-16-331. Definitions for alternate valuation purposes. As used in 72-16-331 through 72-16-349, the following definitions apply:

(1) "Active management" means the making of management decisions of a business, other than the daily operating decisions.

(2) "Adjusted value" means:

(a) in the case of a gross estate, the gross value of all transfers subject to the tax imposed by this part, determined without regard to 72-16-331 through 72-16-349, reduced by the amount of unpaid mortgages and indebtedness;

(b) in the case of real or personal property, the value of the property for the purposes of this part, determined without regard to 72-16-331 through 72-16-349, reduced by the amount of unpaid mortgages and indebtedness.

(3) "Agreement" means a written agreement signed by each person in being who has an interest, whether or not he is in possession, in any property designated in such agreement consenting to the application of 72-16-333 with respect to such property.

(4) "Department" means the department of revenue.

(5) "Disabled" means an individual who has a mental or physical impairment that renders him unable to materially participate in the operation of a farm or other business.

(6) "Eligible qualified heir" means a qualified heir who:

(a) is the surviving spouse of the decedent;

(b) has not attained 21 years of age;

(c) is disabled; or

(d) is a student.

(7) "Farm" means truck farms, ranches, nurseries, ranges, greenhouses, orchards, woodlands, or structures used primarily for raising agricultural or horticultural commodities. The term includes stock, dairy animals, poultry, fur-bearing animals, and fruit.

(8) "Farming purposes" means:

(a) cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and managing of animals on a farm;

(b) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; or

(c) (i) planting, cultivating, caring for, or cutting trees; or

(ii) preparing, other than milling, trees for market.

(9) "Internal Revenue Code" means the Internal Revenue Code of 1954. A reference to a specific section of that code is a reference to that section as it may be labeled or amended.

(10) "Involuntary conversion" means a compulsory or involuntary conversion within the meaning of section 1033 of the Internal Revenue Code.

(11) "Material participation" is determined in a manner similar to the manner used for the purposes of section 1402(a)(1) of the Internal Revenue Code.

(12) (a) "Member of the family" means, with respect to any individual, the individual's:

(i) ancestor;

(ii) spouse and the lineal descendants of the individual's spouse;

(iii) lineal descendant;

(iv) lineal descendants of the individual's parents.

(b) "Member of the family" also includes a spouse of:

(i) the individual's lineal descendants;

(ii) the lineal descendants of the individual's spouse; or

(iii) the lineal descendants of the individual's parents.

(c) For purposes of this subsection (12), a legally adopted child of an individual is treated as a child of the individual by blood.

(13) "Net share rental" means the excess of:

(a) the value of the produce received by a lessor of land on which such produce is grown;

(b) divided by the cash operating expenses of growing such produce which, under the lease, are paid by the lessor.

(14) "Qualified exchange property" means real property that is to be used for the qualified use set forth in subsection (18).

(15) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired the property or to whom the property passed from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(16) "Qualified real property" means real property located in this state that was acquired from or passed from the decedent to a qualified heir of the decedent and that on the date of the decedent's death was being used for a qualified use by the decedent or a member of the decedent's family, but only if:

(a) 50% or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property that:

(i) on the date of the decedent's death was being used for a qualified use by the decedent or a member of the decedent's family; and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent;

(b) 25% or more of the adjusted value of the gross estate consists of the adjusted value of real property that meets the requirements of (a)(ii) and (c) of this subsection;

(c) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which:

(i) the real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family; and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business;

(d) the real property is designated in the agreement referred to in subsection (3) of this section; and

(e) if an election is made with respect to qualified woodland, trees growing on such woodland may not be treated as a crop.

(17) (a) "Qualified replacement property" means:

(i) in the case of an involuntary conversion as described in section 1033(a)(1) of the Internal Revenue Code, any real property into which the real property is converted;

(ii) in the case of an involuntary conversion as described in section 1033(a)(2) of the Internal Revenue Code, any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(A) of the Internal Revenue Code for the purpose of replacing the qualified real property.

(b) "Qualified replacement property" only includes property that is to be used for the qualified use set forth in (a) or (b) of subsection (18) of this section under which the qualified real property qualified under 72-16-333.

(18) (a) "Qualified use" means devotion of the property to any of the following:

(i) use as a farm for farming purposes; or

(ii) use in a trade or business other than the trade or business of farming.

(b) In the case of real property that meets the requirements of subsection (16)(c), residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

(19) "Qualified woodland" means any real property that:

(a) is used in timber operations; and

(b) is an identifiable area of land, such as an acre or other area, for which records are normally maintained in conducting timber operations.

(20) "Student" means an individual as defined by section 151(e)(4) of the Internal Revenue Code.

(21) "Timber operations" means:

(a) the planting, cultivating, caring for, or cutting of trees; or

(b) the preparation, other than milling, of trees for market.

History: En. Sec. 1, Ch. 705, L. 1979; amd. Sec. 185, Ch. 575, L. 1981; amd. Sec. 2, Ch. 511, L. 1983.

72-16-332. Property acquired from decedent defined. Property is considered to have been acquired from the decedent if the property:

(1) is so considered under section 1014(b) of the Internal Revenue Code;

(2) is acquired by any person from the estate; or

(3) is acquired by any person from a trust to the extent the property is includable in the gross estate of the decedent.

History: En. Sec. 9, Ch. 705, L. 1979; amd. Sec. 3, Ch. 511, L. 1983.

72-16-333. Alternate valuation of certain farm or business real property — limitation. (1) If the decedent was at the time of his death a resident of this state and the personal representative elects to have 72-16-331 through 72-16-349 apply and files an agreement with the department, the value of qualified real property for the purposes of the tax imposed by this part is its value for the use under which it qualifies under 72-16-331(16) as qualified real property.

(2) The aggregate decrease in the value of qualified real property taken into account for the purposes of the Montana inheritance tax that results from the application of (1) of this section may not exceed $500,000 in the case of a decedent dying prior to October 1, 1983, and may not exceed $750,000 for decedents dying thereafter.

History: En. Sec. 2, Ch. 705, L. 1979; amd. Sec. 4, Ch. 511, L. 1983.

72-16-334. Election of alternate valuation. An election for valuation under 72-16-331 through 72-16-349 must be made within 18 months of the date of the decedent's death and must be made in such manner as the department may prescribe. The election, once made, is irrevocable.

History: En. Sec. 3, Ch. 705, L. 1979; amd. Sec. 5, Ch. 511, L. 1983.

72-16-335. Valuation of farms. (1) Except as provided in (3) of this section, the value of a farm for farming purposes is determined by dividing the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of the farm over the average annual state and local real estate taxes for comparable land by the average annual effective interest rate for all new federal land bank loans. For purposes of the preceding sentence, each average annual computation must be made on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

(2) If there is no comparable land from which the annual average gross cash rental may be determined but there is comparable land from which the average net share rental may be determined, when subsection (1) is applied, "average annual net share rental" must be substituted for "average annual gross cash rental".

(3) The formula in (1) and (2) of this section may not be used:

(a) if it is established that there is no comparable land from which the average annual gross cash rental may be determined and that there is no comparable land from which the average net share rental may be determined; or

(b) if the personal representative elects to have the value of the farm for farming purposes determined under 72-16-336.

History: En. Sec. 4, Ch. 705, L. 1979; amd. Sec. 6, Ch. 511, L. 1983.

72-16-336. Valuation of closely held business interests. If 72-16-335 does not apply, the following factors apply in determining the value of any qualified real property:

(1) The capitalization of income that the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors;

(2) the capitalization of the fair rental value of the land for farmland or closely held business purposes;

(3) assessed land values;

(4) comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that nonagricultural use is not a significant factor in the sales price; and

(5) any other factor that fairly values the farm or closely held business value of the property.

History: En. Sec. 5, Ch. 705, L. 1979.

72-16-337. Application to certain business interests — department rules. (1) The department shall prescribe regulations setting forth the application of 72-16-331 through 72-16-349 in the case of an interest in a partnership, corporation, or trust that, with respect to the decedent, is an interest in a closely held business within the meaning of 72-16-453.

(2) For the purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs must be treated as a present interest.

History: En. Sec. 11, Ch. 705, L. 1979; amd. Sec. 7, Ch. 511, L. 1983.

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

72-16-338. Disposition or failure to use for qualified use — additional tax. (1) There is hereby imposed an additional inheritance tax if within 10 years after the decedent's death and before the death of the qualified heir:

(a) the qualified heir disposes of any interest in qualified real property other than by a disposition to a member of his family; or

(b) the qualified heir ceases to use for the qualified use the qualified real property which was acquired or passed from the decedent.

(2) The amount of additional tax imposed by (1) of this section with respect to any interest is the amount equal to the lesser of:

(a) the adjusted tax difference attributable to such interest; or

(b) the excess of the amount realized with respect to the interest or, in any case other than a sale or exchange at arm's length, the fair market value of the interest over the value of the interest determined under 72-16-333.

(3) For the purposes of (2) of this section, the adjusted tax difference attributable to an interest is the amount that bears the same ratio to the adjusted tax difference with respect to the estate as determined under (4) of this section as the excess of the value of such interest for purposes of the Montana inheritance tax, determined without regard to 72-16-331 through 72-16-349, over the value of such interest determined under 72-16-333 bears to a similar excess determined for all qualified real property.

(4) For the purposes of (3) of this section, "adjusted tax difference with respect to the estate" means the excess of what would have been the tax liability but for 72-16-333 over the tax liability. For the purposes of this subsection, "tax liability" means the tax imposed by Title 72, chapter 16.

(5) For the purposes of this section, if the qualified heir disposes of a portion of the interest acquired by or passing to such heir or a predecessor qualified heir or there is a cessation of use of such a portion, the value determined under 72-16-333 taken into account under (2)(b) of this section with respect to such portion shall be its pro rata share of the value of the

interest and the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this section with respect to all prior transactions involving portions of the interest.

(6) In the case of an interest acquired from or passing from any decedent, if (a) or (b) of subsection (1) of this section applies to any portion of an interest, (b) or (a) of subsection (1) of this section, as the case may be, does not apply with respect to the same portion of the interest.

(7) The additional tax imposed by this section is due on the day that is 6 months after the date of the disposition or cessation.

(8) The qualified heir is personally liable for the additional tax with respect to his interest unless the heir has furnished bond that meets the requirements of 72-16-340.

History: En. Sec. 7, Ch. 705, L. 1979; amd. Sec. 8, Ch. 511, L. 1983.

72-16-339. When cessation of qualified use occurs. For the purposes of 72-16-338, real property ceases to be used for the qualified use if:

(1) the property ceases to be used for the qualified use set forth in 72-16-331 under which the property qualified under 72-16-331; or

(2) during any period of 8 years ending after the date of the decedent's death and before the date of the death of the qualified heir, there had been periods aggregating more than 3 years during which:

(a) in the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business; and

(b) in the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business.

History: En. Sec. 8, Ch. 705, L. 1979; amd. Sec. 9, Ch. 511, L. 1983.

72-16-340. Notice to heir of additional tax — bond in lieu of personal liability. (1) If the qualified heir makes written application to the department for the determination of the additional tax that may be imposed by 72-16-338 with respect to the qualified heir's interest, the department must, as soon as possible and in any event within 1 year after the making of the application, notify the heir of the maximum amount.

(2) The qualified heir, on furnishing a bond in such amount and for such period as may be required, is discharged from personal liability for any additional tax imposed by 72-16-338 and is entitled to a receipt or writing showing such discharge.

History: En. Sec. 10, Ch. 705, L. 1979.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-16-341. Involuntary conversion of qualified real property. (1) If there is an involuntary conversion of an interest in qualified real property, no tax is imposed by 72-16-338 on the conversion if the cost of the qualified replacement property equals or exceeds the amount realized on the conversion.

(2) If (1) of this section does not apply, the tax imposed by 72-16-338, with respect to any involuntary conversion, is the amount of tax that, but for this

subsection, would have been imposed on the conversion reduced by an amount that bears the same ratio to such tax as the cost of the qualified replacement property bears to the amount realized on the conversion.

(3) (a) For the purposes of 72-16-338, any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified real property that was involuntarily converted, except that with respect to such qualified replacement property, the 10-year period under 72-16-338 shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i) of the Internal Revenue Code, during which the qualified heir was allowed to replace the qualified real property.

(b) Any tax imposed by 72-16-338 on the involuntary conversion shall be treated as a tax imposed on a partial disposition. The provisions of 72-16-339 shall be applied by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property and by treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

(4) The rules of the last sentence of section 1033(a)(2)(B) of the Internal Revenue Code apply for the purposes of 72-16-331(17)(a)(ii).

History: En. Sec. 12, Ch. 705, L. 1979; amd. Sec. 10, Ch. 511, L. 1983.

72-16-342. Time limitations on assessment of additional tax. (1) If qualified real property is disposed of or ceases to be used for a qualified use, the statutory period for the assessment of any additional tax under 72-16-338 attributable to disposition or cessation may not expire until 3 years after the date the department is notified, in a manner to be prescribed by the department, of the disposition or cessation or, in the case of an involuntary conversion or exchange in which 72-16-341 or 72-16-348 applies, 3 years from the date the department is notified of the replacement of the converted property or of an intention to replace or exchange the property.

(2) The additional tax may be assessed before the expiration of the 3-year period referred to in (1) of this section, notwithstanding the provisions of any other law or rule of law that would otherwise prevent such assessment.

History: En. Sec. 6, Ch. 705, L. 1979; amd. Sec. 11, Ch. 511, L. 1983.

72-16-343. Special rules for surviving spouses. (1) If property is qualified real property with respect to a decedent, hereinafter in this subsection referred to as the “first decedent”, and the property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, for purposes of applying this section and 72-16-339 in the case of the estate of such surviving spouse, active management of a farm or other business by the surviving spouse must be treated as material participation by the surviving spouse in the operation of the farm or business.

(2) For the purposes of subsection (1), the determination of whether property is qualified real property with respect to the first decedent must be made without regard to whether an election under 72-16-334 was made.

History: En. Sec. 17, Ch. 511, L. 1983.

72-16-344. Decedents who are retired or disabled. (1) If on the date of the decedent's death, the requirements of 72-16-331(16)(c)(ii) with respect to the decedent for any property are not met and the decedent either was receiving old-age benefits under Title II of the Social Security Act for a continuous period ending on the date of death or was disabled for a continuous period ending on the date of death, then 72-16-331(16)(c) must be applied with respect to such property by substituting "the date on which the longer of the continuous periods described in this subsection began" for "the date of the decedent's death" in 72-16-331(16)(c).

(2) For purposes of 72-16-339(2)(a), if the requirements of 72-16-331(16)(c)(ii) are met with respect to any decedent by reason of subsection (1), the period ending on the date on which the continuous period taken into account under subsection (1) began must be treated as the period immediately before the decedent's death.

History: En. Sec. 18, Ch. 511, L. 1983.

72-16-345. Active management by eligible qualified heir treated as material participation. (1) For purposes of 72-16-339, the active management of a farm or other business by an eligible qualified heir or a fiduciary of an eligible qualified heir must be treated as a material participation by the eligible qualified heir in the operation of the farm or business.

(2) In the case of an eligible qualified heir, subsection (1) applies only during periods during which the heir continues to be an eligible qualified heir.

History: En. Sec. 19, Ch. 511, L. 1983.

72-16-346. No tax if use begins within two years. If the date on which the qualified heir begins to use the qualified real property, hereinafter referred to as the commencement date, is before the date 2 years after the decedent's death:

(1) no tax may be imposed under 72-16-338 by reason of the failure by the qualified heir to so use such property before the commencement date; and

(2) the 10-year period under 72-16-338 must be extended by the period between the decedent's death and the commencement date.

History: En. Sec. 20, Ch. 511, L. 1983.

72-16-347. Special rule for disposition of timber. In the case of qualified woodland to which an election under 72-16-334 applies, if the qualified heir disposes of or severs any standing timber on the qualified woodland:

(1) the disposition or severance is treated as a disposition of a portion of the interest of the qualified heir in the property; and

(2) the additional tax imposed by 72-16-338 with respect to the disposition is an amount equal to the lesser of:

(a) the amount realized on the disposition or, in any case other than a sale or exchange at arm's length, the fair market value of the portion of the interest disposed or severed; or

(b) the amount of additional tax determined under this section, without regard to this subsection (2)(b), if the entire interest of the qualified heir in the qualified woodland had been disposed of, less the sum of the amount of the additional tax imposed with respect to all prior transactions involving the woodland to which subsection (2) applied.

(3) For purposes of subsection (2), the disposition of a right to sever is treated as the disposition of the standing timber. The amount of additional tax imposed under 72-16-338 in a case in which a qualified heir disposes of

his entire interest in the qualified woodland must be reduced by any amount determined under this section with respect to such woodland.

History: **En. Sec. 21, Ch. 511, L. 1983.**

72-16-348. Exchanges of qualified real property. (1) If an interest in qualified real property is exchanged solely for an interest in qualified exchange property in a transaction that qualifies under section 1031 of the Internal Revenue Code, no tax may be imposed by 72-16-338 by reason of the exchange.

(2) If an interest in qualified real property is exchanged for an interest in qualified exchange property and other property in a transaction that qualifies under section 1031 of the Internal Revenue Code, the amount of the tax imposed by 72-16-338 by reason of the exchange must be the amount of tax that would have been imposed on the exchange under 72-16-338, without regard to this section, reduced by an amount which bears the same ratio to such tax as the fair market value of the other property bears to the fair market value of the qualified real property exchanged. Fair market value must be determined as of the time of the exchange.

(3) For purposes of 72-16-338:

(a) any interest in qualified exchange property must be treated in the same manner as if it were a portion of the interest in qualified real property that was exchanged;

(b) any tax imposed by 72-16-338 by reason of the exchange must be treated as a tax imposed on a partial disposition; and

(c) 72-16-338 must be applied by treating material participation with respect to the exchanged property as material participation with respect to the qualified exchange property.

History: **En. Sec. 22, Ch. 511, L. 1983.**

72-16-349. Treatment of replacement property acquired in transactions under section 1031 or 1033 of the Internal Revenue Code. (1) Except as provided in subsection (2) in the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of his family must be treated as a period during which there was such ownership, use, or material participation with respect to the qualified replacement property.

(2) Subsection (1) does not apply to the extent that the fair market value of the qualified replacement property, as of the date of its acquisition, exceeds the fair market value of the replaced property, as of the date of its disposition.

(3) For purposes of this section:

(a) the term "qualified replacement property" means any real property:

(i) that is acquired in an exchange which qualifies under section 1031 of the Internal Revenue Code;

(ii) the acquisition of which results in the nonrecognition of gain under section 1033 of the Internal Revenue Code; or

(iii) that is used for the same qualified use as the replaced property was being used before the exchange;

(b) the term "replaced property" means:

(i) the property transferred in the exchange that qualifies under section 1031 of the Internal Revenue Code; or

(ii) the property compulsorily or involuntarily converted within the meaning of section 1033 of the Internal Revenue Code.

History: En. Sec. 23, Ch. 511, L. 1983.

Part 4

Determination and Payment of Tax

72-16-401. Application for determination of tax by department — information, documents to be furnished to department. (1) The personal representative or, should the personal representative fail to do so, any interested person shall make application to the department of revenue for determination of any tax due upon the estate of a decedent.

(2) The applicant shall furnish to the department the inventory and appraisement required by 72-3-607 and any supplemental inventory under 72-3-609, together with a statement under oath or affirmation of any property owned by the decedent at the time of his death situated outside of this state and without its jurisdiction. The applicant shall, upon request of the department, furnish the department with the final accounting of such personal representative. If the decedent died testate, the personal representative shall likewise furnish the department with a certified copy of the last will of the decedent. If the decedent died intestate, the personal representative shall provide the department with a sworn statement setting forth the names, ages, and residences of the heirs at law of decedent. In all cases, the personal representative shall set forth the proportion of the entire estate inherited by or devised to each of said persons and the relation, if any, which each devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made.

(3) The information so provided shall not be binding upon the department in case it believes the same to be erroneous or untrue.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975; R.C.M. 1947, 91-4468(part).

72-16-402. Department to determine tax. From the information so furnished the department of revenue and such other information as it may be able to obtain with reference thereto, the department shall with reasonable diligence proceed to ascertain and determine the amount of tax, if any, due under the provisions of the inheritance tax laws of the state of Montana, and a copy of such determination shall be mailed to the personal representative and to the clerk of the appropriate district court. If no tax is due, the department shall likewise so inform the clerk of district court and the personal representative.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975; R.C.M. 1947, 91-4468(part).

72-16-403. Appeal of department's determination — notice — determination by court. (1) Should the personal representative or any person affected by the determination of inheritance tax feel aggrieved by the department of revenue's determination, he may, within 60 days after the filing of the copy of such determination with the clerk of district court, appeal the determination to the appropriate district court by serving upon the department his objections to such determination and by filing such notice after so serving the same in the office of the clerk of such court.

(2) The court shall set a day for hearing such appeal upon 10 days' notice to all interested parties and at the time and place set shall hear the appeal upon all papers and records which may be properly presented before it and shall as soon as possible thereafter issue its order determining the amount of such inheritance tax, if it finds a tax to be due.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975; R.C.M. 1947, 91-4468(part).

72-16-404 through 72-16-410 reserved.

72-16-411. Special appraiser — appointment. The district court, upon the application of any interested party, including the department of revenue, shall appoint a competent person as special appraiser to fix the fair market value at the time of the transfer thereof of the property of persons whose estate shall be subject to the payment of any tax imposed by parts 1 through 8.

History: En. Sec. 13, Ch. 65, L. 1923; amd. Sec. 2, Ch. 141, L. 1927; re-en. Sec. 10400.17, R.C.M. 1935; amd. Sec. 84, Ch. 391, L. 1973; R.C.M. 1947, 91-4427.

72-16-412. Powers and duties of appraiser. (1) Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the department of revenue, and to such persons as the district court may by order direct of the time and place when he will appraise such property.

(2) He shall, at such time and place, appraise the same at its fair market value, as herein prescribed; and for that purpose the appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof. He shall make report thereof and of such value in writing to the district court, together with the depositions of the witnesses examined and such other facts in relation thereto and to the matter as the district court may order or require.

(3) The report of the special appraiser shall be made in triplicate, and not less than 10 days before the hearing thereon one of said triplicates shall be filed in the office of the district court, one to the administrator or the executor, and the other shall be mailed to the department.

History: (1), (2)En. Sec. 14, Ch. 65, L. 1923; amd. Sec. 4, Ch. 150, L. 1925; re-en. Sec. 10400.18, R.C.M. 1935; amd. Sec. 85, Ch. 391, L. 1973; Sec. 91-4428, R.C.M. 1947; (3)En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.19, R.C.M. 1935; amd. Sec. 86, Ch. 391, L. 1973; Sec. 91-4429, R.C.M. 1947; R.C.M. 1947, 91-4428(part), 91-4429(part).

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

Depositions, Rule 27, M.R.Civ.P. (see Title 25, ch. 20).

72-16-413. Compensation and expenses of appraiser and witnesses. Every appraiser shall be paid on the certificate of the district court at the rate of not to exceed $10 per day for every day actually and necessarily employed in such appraisal and shall receive his actual and necessary traveling expenses, and witnesses shall be allowed the same fees as are allowed witnesses in civil actions in courts of record and the same shall be paid by the executor, administrator, or trustee of such estate in the same manner as provided for the payment of other administration expenses.

History: En. Sec. 14, Ch. 65, L. 1923; amd. Sec. 4, Ch. 150, L. 1925; re-en. Sec. 10400.18, R.C.M. 1935; amd. Sec. 85, Ch. 391, L. 1973; R.C.M. 1947, 91-4428(part).

Cross-References

Travel, meals, and lodging, Title 2, ch. 18, part 5.

Witness fees, Title 26, ch. 2, part 5.

72-16-414. Appraisal to be at clear market value at time of death. Whenever a transfer of property is made upon which there is or in any contingency there may be a tax imposed, such property shall be appraised at its clear market value existing at the date of death of the transferor, which appraisement shall be made as soon thereafter as practicable.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.22, R.C.M. 1935; amd. Secs. 1 and 2, Ch. 101, L. 1947; R.C.M. 1947, 91-4432(part).

72-16-415. Hearing by court. At the time and place of hearing the administration account, the district court shall examine the report of the special appraiser and from the report and other proofs relating to any such estate shall forthwith determine the cash value of such estate and the amount of tax to which the same is liable; or the district court, without appointing such appraiser, may at the time so fixed hear the evidence and determine the cash value of such estate and the amount of tax to which the same is liable.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.19, R.C.M. 1935; amd. Sec. 86, Ch. 391, L. 1973; R.C.M. 1947, 91-4429(part).

72-16-416. Notice of hearing — application for exclusion to accompany notice. (1) Notice of such hearing to determine the inheritance tax shall be given in the manner and for the time provided in 72-1-301 to all interested persons and to the department of revenue.

(2) A copy of the application for exclusion of any property to avoid inheritance tax thereon shall be given with notice of hearing thereof, and notice of any such hearing shall be mailed to the department not less than 15 days before such hearing upon notice forms provided by the department and containing such information as it may require.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.20, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1949; amd. Sec. 87, Ch. 391, L. 1973; amd. Sec. 7, Ch. 365, L. 1974; R.C.M. 1947, 91-4430.

72-16-417. Future, contingent, or limited estates — duty of insurance commissioner — method of valuation. (1) The commissioner of insurance shall, on application of any district court or of the department of revenue, determine the value of any such future or contingent estates, income, or interests therein limited, contingent, dependent, or determinable upon the life or lives of the person or persons in being, upon the facts contained in the district court's finding and determination and contained in such special appraiser's report, and upon the facts certify the same to the district court or to the department, and his certificate shall be presumptive evidence that the method of computation adopted therein is correct.

(2) The value of every future or limited estate, income, interest, or annuity dependent upon any life or lives in being shall be determined by the rule, method, and standard of mortality and value employed by the commissioner of insurance of the state of Montana in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be 5% per annum. The tax so determined shall be construed to be upon the transfer of a proportion of the principal or corpus of the estate equal to the present value of such future or limited estate, income, interest, or annuity and not upon any earnings or income of said property produced after death.

(3) Such tax shall be due and payable forthwith, except as otherwise provided in parts 1 through 8.

History: (1)En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.21, R.C.M. 1935; amd. Sec. 88, Ch. 391, L. 1973; Sec. 91-4431, R.C.M. 1947; (2), (3)En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.22, R.C.M. 1935; amd. Secs. 1 and 2, Ch. 101, L. 1947; Sec. 91-4432, R.C.M. 1947; R.C.M. 1947, 91-4431, 91-4432(part).

72-16-418. Contingent encumbrances — no allowance for — return if takes effect. (1) In estimating the value of any estate or interest in property to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent encumbrance thereon or in respect of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated, or diminished.

(2) In the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary or in the event of the abridgment, defeat, or diminution of such estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax in respect of the amount or value of the encumbrance when taking effect or so much as will reduce the same to the amount which would have been assessed in respect to the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided in 72-16-439 and 72-16-442.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.23, R.C.M. 1935; R.C.M. 1947, 91-4433.

72-16-419. Tax payable forthwith on contingent estate — lowest rate. When property is transferred in trust or otherwise and the rights, interests, or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon such transfer at the lowest rate which, on the happening of any of the contingencies or conditions, would be possible under the provisions of parts 1 through 8, and such tax so imposed shall be due and payable forthwith out of the property transferred. However, on the happening of any contingency or condition whereby the property or any part thereof is transferred to a person or corporation which under the provisions of parts 1 through 8 is required to pay a tax at a higher rate than the tax imposed, then such transferee shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall be enforced and collected as provided in parts 1 through 8.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.25, R.C.M. 1935; R.C.M. 1947, 91-4435.

72-16-420. Estate for life or years subject to divesting — how taxed. Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.26, R.C.M. 1935; R.C.M. 1947, 91-4436(part).

72-16-421. Appraisal of contingent or defeasible estate when tax postponed. Estates in expectancy which are contingent or defeasible and in which proceedings for determination of the tax have not been taken or where the taxation thereof has been held in abeyance shall be appraised at their full undiminished clear value when the person entitled thereto shall come into the beneficial enjoyment or possession thereof without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation upon which said estates in expectancy may have been limited.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.26, R.C.M. 1935; R.C.M. 1947, 91-4436(part).

72-16-422. Court order determining tax — contents — form. (1) When the district court shall be required to make a determination of the value of any estate which is taxable under the inheritance tax laws and of the tax to which it is liable, an order shall be entered by the court determining the same, which order shall include a statement of:

(a) the date of death of the decedent;

(b) the gross value of the real and personal property of such estate, stating the principal items thereof;

(c) the deductions therefrom allowed by the court;

(d) the names and relationship of the persons entitled to receive the same, with the amount received by each;

(e) the rates and amounts of inheritance tax for which each such person is liable and the total amount of tax to be paid;

(f) the amount of interest or penalty due, if any.

(2) Such order shall be substantially in the form prescribed by the department of revenue.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.27, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1971; amd. Sec. 89, Ch. 391, L. 1973; amd. Sec. 8, Ch. 365, L. 1974; R.C.M. 1947, 91-4437(part).

72-16-423. Court order to be delivered and taxes paid before final judgment in estate. A copy of the court order referred to in 72-16-422 shall be delivered or mailed to the county treasurer, the administrator or executor, and the department of revenue, and no final judgment may be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed and receipts are filed with the court showing the payment of all such taxes or proof is filed showing that the permission for deferral of payment authorized by 72-16-438 has been given.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.27, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1971; amd. Sec. 89, Ch. 391, L. 1973; amd. Sec. 8, Ch. 365, L. 1974; R.C.M. 1947, 91-4437(part); amd. Sec. 24, Ch. 6, L. 1979.

72-16-424. Rehearing of court determination within sixty days. When an appraisement, assessment, or determination of tax is made by a district court, the attorney general, department of revenue, public administrator, county attorney, or any person dissatisfied with the appraisement or assessment and determination of such tax may apply for a rehearing thereof before the district court within 60 days from the fixing, assessing, and determination of the tax by the district court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearing as herein provided unless additional or newly discovered evidence be alleged therefor, and a new trial shall not be had or granted unless specially ordered by the district court.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.28, R.C.M. 1935; amd. Sec. 90, Ch. 391, L. 1973; amd. Sec. 9, Ch. 365, L. 1974; R.C.M. 1947, 91-4438.

72-16-425. Reappraisal within one year — appointment of appraiser — procedure. (1) Within 1 year after the entry of an order or decree of the district court determining the value of an estate and assessing the tax thereon, the attorney general or the department of revenue may, if he or it believes that such appraisal, assessment, or determination has been erroneously, fraudulently, or collusively made, make application to the district judge for a reappraisal thereof.

(2) The district court to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties, shall give the notice, and receive the compensation provided by 72-16-412 to 72-16-425, inclusive. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of parts 1 through 8, upon the certificate of the district judge.

(3) The report of such appraiser shall be filed in the office of the clerk of the district court, and thereafter the same proceedings shall be taken and had by and before such district court as herein provided to be taken and had by and before the court.

(4) The determination and assessment of such district court shall supersede the former determination and assessment of such court and shall be filed in the office of the county treasurer, state treasurer, and department of revenue.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.29, R.C.M. 1935; amd. Sec. 91, Ch. 391, L. 1973; R.C.M. 1947, 91-4439.

72-16-426 through 72-16-430 reserved.

72-16-431. Tax — when due and payable. All taxes imposed by parts 1 through 8 shall be due and payable at the time of the death of the decedent, except as hereinafter provided.

History: **En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; R.C.M. 1947, 91-4415(part).**

72-16-432. Tax lien — continuing personal liability — filing of warrant for distraint. (1) All property which is affected by the death of the decedent and on which inheritance, estate, or death taxes are due under the laws of this state is subject to the lien of the state of Montana until such taxes have been paid. This lien follows all property sold in the course of administration or distributed under chapters 1 through 5 until such time as all inheritance taxes have been paid and a receipt showing payment thereof has been filed with the clerk of court, subject to subsection (2).

(2) Every such tax shall be and remain a lien upon the property transferred for a period of 10 years from the time of the death of the decedent, whether said death occurred before or after July 1, 1965, unless sooner paid.

(3) The person to whom the property is transferred and the personal representatives and trustees of every estate so transferred shall be personally liable for such tax until its payment.

(4) (a) The lien provided for in subsection (1) shall be perfected by the filing of a warrant for distraint by the department of revenue with the clerk of a district court in the county in which the estate is being administered or in a county where any of the estate property is located or has been transported.

(b) The warrant shall be filed 60 days after the department has determined the amount of any tax or, if the department's determination has been appealed to the district court, the warrant shall be filed after the court's determination has become final.

(c) The procedures provided for a hearing before execution of a warrant for distraint contained in 15-1-705 do not apply to warrants filed under this section.

(5) The department or the sheriff of a county to whom a writ of execution is directed may proceed to execute upon the warrant in the same manner as prescribed for the execution upon a judgment, except that execution may be had as a matter of right for a period of 10 years, as provided in subsection (2).

History: **(1)En. 91A-3-1010 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 8, Ch. 516,L. 1975; Sec. 91A-3-1010, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; Sec. 91-4415, R.C.M. 1947; R.C.M. 1947, 91-4415(part), 91A-3-1010(part); amd. Sec. 2, Ch. 131, L. 1989.**

Cross-References

Collection of delinquent taxes — warrant for distraint, Title 15, ch. 1, part 7.

Warrant for distraint — issuance, 15-1-702.

72-16-433. Department consent to transfer free of lien. The department of revenue may issue a consent to transfer any real or personal property in the estate of a decedent free of the lien for unpaid inheritance taxes upon proper application and under such rules as the department shall prescribe.

History: **En. 91A-3-1010 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 8, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-1010(part).**

72-16-434. Method of payment and receipt. (1) The tax shall be paid to the department of revenue for transmittal to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided or to the treasurer of the county of residence of the decedent if a court proceeding is not involved.

(2) If paid to the county treasurer said treasurer shall receipt therefor making five copies thereof and distribute said copies as follows:

(a) original receipt, to the clerk of the district court;

(b) first copy, to the personal representative, trustee, or person paying said tax;

(c) second copy, attached to and mailed with the report required by 72-16-215, as amended, to the department of revenue;

(d) third copy, to the county clerk and recorder;

(e) fourth copy, retained by the treasurer on file in his office.

(3) The copy of the receipt given to the personal representative or trustee shall be a proper voucher in the settlement of his accounts.

History: En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; R.C.M. 1947, 91-4415(part).

72-16-435. Receipts — form and contents — recording. (1) Any person shall be entitled to a receipt from the county treasurer of any county or the state treasurer or, at his option, to a copy of a receipt that may have been given by such county treasurer or state treasurer for the payment of any tax under parts 1 through 8, under the official seal of such county treasurer or state treasurer, which receipt shall designate upon whose estate such tax shall have been paid, by whom, and whether in full of such tax.

(2) Such receipt may be recorded in the office of the county recorder of the county in which such estate is situate in a book to be kept by him for that purpose, which shall be labeled "transfer tax".

History: En. Sec. 21, Ch. 65, L. 1923; re-en. Sec. 10400.42, R.C.M. 1935; R.C.M. 1947, 91-4452.

72-16-436. Powers and duties of representative in collection and payment of tax. (1) Every personal representative shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such personal representative having in charge or in trust any property for distribution subject to such tax shall deduct the tax therefrom and within 30 days therefrom shall pay over the same to the county treasurer, as herein provided.

(2) If such property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific property subject to tax under this law to any person until he shall have collected the tax thereon. If any such devise shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the personal representative, and the tax shall remain a lien or charge on such real property for the period provided in 72-16-432, and the payment thereof shall be enforced by the personal representative in the same manner that payment of the devise might be enforced or by the attorney general under 72-16-443. If any such devise shall be given in money to any such person for a limited period, the personal representative shall retain the tax upon the whole amount, but if it be not in money and agreement as to apportionment cannot be reached by

him with the devisee or devisees affected, he shall make application to the appropriate court to make an apportionment, if the case require it, of the sum to be paid into the hands of such devisees and for such further order relative thereto as the case may require, such application being treated as a supervised proceeding.

History: **En. Sec. 7, Ch. 65, L. 1923; re-en. Sec. 10400.7, R.C.M. 1935; amd. Sec. 2, Ch. 99, L. 1965; amd. Sec. 5, Ch. 365, L. 1974; R.C.M. 1947, 91-4417.**

72-16-437. Personal representative not entitled to closing unless tax paid or deferred. No personal representative or trustee is entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of parts 1 through 8 unless he produces such receipt or a certified copy thereof or unless permission for deferral of payment has been granted as provided in 72-16-438.

History: **En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; R.C.M. 1947, 91-4415(part); amd. Sec. 25, Ch. 6, L. 1979.**

72-16-438. Permission for deferred payment of tax. Any beneficiary of any property chargeable with a tax under 72-16-301 through 72-16-304 and 72-16-307 and any personal representative or trustee of the estate may request, within 18 months from the date of the death of decedent or transfer of the property, permission not to pay such tax or a portion thereof until the person beneficially interested comes into the actual possession or enjoyment thereof or until payment can be made without liquidating a portion of the capital assets. The department may permit the deferral of payment for not more than 5 years, upon such conditions and terms as the department considers necessary to assure payment.

History: **En. Sec. 9, Ch. 65, L. 1923; re-en. Sec. 10400.9, R.C.M. 1935; amd. Sec. 79, Ch. 391, L. 1973; amd. Sec. 6, Ch. 490, L. 1977; R.C.M. 1947, 91-4419.**

72-16-439. Advance payment — relief from interest or penalty — discount — refund of excess paid. (1) Any person from whom such tax is or may be due may make an estimate of and pay the same to the county treasurer, who shall receipt therefor, at any time before the same is determined by the department of revenue and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined.

(2) In the event the person making payment has done so in accordance with the provisions of 72-16-440 pertaining to the allowance of a 5% discount, the person making payment shall be relieved from any interest or penalty and shall be allowed the 5% discount upon the amount which he so declared due as his inheritance tax liability. The tax may be declared to be due by paying the amount estimated by the taxpayer to the county treasurer.

(3) The money shall be paid to the county treasurer, who shall pay the money to the state treasurer on or before the 20th day of the month following the collection.

(4) As soon as the correct amount of inheritance tax has been determined, any excess so paid shall be refunded to the person so paying or entitled thereto by the department.

History: En. Sec. 8, Ch. 65, L. 1923; amd. Sec. 1, Ch. 47, L. 1935; re-en. Sec. 10400.8, R.C.M. 1935; amd. Sec. 7, Ch. 126, L. 1963; amd. Sec. 2, Ch. 15, L. 1967; amd. Sec. 1, Ch. 36, L. 1971; amd. Sec. 1, Ch. 316, L. 1973; amd. Sec. 78, Ch. 391, L. 1973; amd. Sec. 3, Ch. 424, L. 1975; R.C.M. 1947, 91-4418(part); amd. Sec. 1, Ch. 136, L. 1989.

72-16-440. Discount for prompt payment. If the tax is paid within 18 months of the death of the decedent, a discount of 5% shall be deducted therefrom. The deduction of this discount of 5% shall be accomplished by paying within the 18-month period from the date that the tax accrues an amount equal to 95% of the total tax declared due by the person making payment.

History: En. Sec. 6, Ch. 65, L. 1923; re-en. Sec. 10400.6, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1967; amd. Sec. 5, Ch. 490, L. 1977; R.C.M. 1947, 91-4416(1).

72-16-441. Interest on overdue payments. (1) If such tax is not paid within 18 months of the death of the decedent, interest shall be charged and collected thereon at the rate of 10% a year from the time the tax accrued, unless because of claims made upon the estate, necessary litigation, or other unavoidable cause of delay the tax is not determined and paid as herein provided, in which case interest at the rate of 6% shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which time 10% shall be charged.

(2) Litigation to defeat the payment of the tax is not necessary litigation.

(3) When permission has been granted to defer payment of tax under 72-16-438, interest shall be charged at the rate of 6% after 1 year from the date of death until the date of payment thereof.

History: En. Sec. 6, Ch. 65, L. 1923; re-en. Sec. 10400.6, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1967; amd. Sec. 5, Ch. 490, L. 1977; R.C.M. 1947, 91-4416(2).

72-16-442. Refund of tax when debt against estate proved after distribution. If any debt shall be proved against the estate of the decedent after the payment of any legacy or distributive share thereof from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required by the order of the district court having jurisdiction of the tax so deducted or paid to refund the amount of such debts or any part thereof, an equitable proportion thereof shall be repaid to such person by the personal representative or trustee, if the tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid.

History: En. Sec. 8, Ch. 65, L. 1923; amd. Sec. 1, Ch. 47, L. 1935; re-en. Sec. 10400.8, R.C.M. 1935; amd. Sec. 7, Ch. 126, L. 1963; amd. Sec. 2, Ch. 15, L. 1967; amd. Sec. 1, Ch. 36, L. 1971; amd. Sec. 1, Ch. 316, L. 1973; amd. Sec. 78, Ch. 391, L. 1973; amd. Sec. 3, Ch. 424, L. 1975; R.C.M. 1947, 91-4418(part).

72-16-443. Collection of unpaid taxes. (1) If any county treasurer, the state treasurer, or the department of revenue has reason to believe that any tax is due and unpaid under the provisions of parts 1 through 8, after the refusal or neglect of any person liable therefor to pay the same, he or it shall notify the attorney general in writing of such failure or neglect; and the attorney general, if he has probable cause to believe that such tax is due and unpaid, shall apply to the district court for a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than

3 months from the date of such citation, and show cause why the tax should not be paid.

(2) The judge of the district court, upon such application and whenever it appears to him that any such tax accruing under parts 1 through 8 has not been paid as required by law, shall issue such citation. The service of such citation and the time, manner, and proof thereof and the hearing and determination thereof shall conform as near as may be to the provisions of the laws governing probate practice of this state.

(3) Whenever it appears that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of parts 1 through 8 in such district court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax; and the attorney general, in the name of the state, shall sue for and enforce the collection of such tax, and the county attorney of the county shall appear for and act on behalf of any county treasurer who is cited to appear before any district court under the provisions of parts 1 through 8.

History: En. Sec. 16, Ch. 65, L. 1923; re-en. Sec. 10400.30, R.C.M. 1935; amd. Sec. 92, Ch. 391, L. 1973; R.C.M. 1947, 91-4440; amd. Sec. 26, Ch. 6, L. 1979.

72-16-444 reserved.

72-16-445. In-kind payment — intent. It is the intent of 72-16-445 through 72-16-450 to allow the payment of inheritance and estate taxes by the transfer to the state of unique objects of significant historical or artistic interest, extremely unique sites or buildings of historical interest, and easements and other recognized interests in land to conserve unique open space and to preserve wildlife habitat, park, recreational, historic, aesthetic, cultural, and natural values on or related to land, while limiting the impact of such transfers on the revenue collected under this chapter. It is the intent of 72-16-445 through 72-16-450 to allow in-kind payment for a short period of time to evaluate the impact of 72-16-445 through 72-16-450 on revenue, to evaluate the types of in-kind payments which are recommended by the department of revenue, and to evaluate the ability of receiving entities to manage the in-kind payments. It is not the intent of 72-16-445 through 72-16-450 to create a right in any donor to pay estate or inheritance taxes with an in-kind payment.

History: En. Sec. 1, Ch. 736, L. 1985.

72-16-446. In-kind payment — definitions. As used in 72-16-445 through 72-16-450, the following definitions apply:

(1) "Donor" means the personal representative, administrator, joint tenant, heir, legatee, devisee, trustee, tenant in common, conservator, person interested in the estate or trust, or any person responsible for the payment of inheritance or estate taxes to the state.

(2) "In-kind payment" means a payment of inheritance or estate taxes or a portion thereof by the transfer to the state of personal property, real property, or an interest in real property as defined in Title 70, chapters 15 and 17.

(3) "Interest in real property having recreational, conservation, or wildlife value" means any interest in real property recognized in Title 70, chapters 15 and 17, that, in the opinion of the receiving entity, is of unique value as a

scenic, historic, archaeologic, scientific, or recreational resource to the state and which will contribute to the cultural, recreational, or economic life of the people and their health or is unique and critical habitat for wildlife in the state.

(4) "Object of significant artistic merit" means any object of art, a collection of records or minerals, or a painting, engraving, relic, coin, furniture, or fixture which in the opinion of the receiving entity is of unique and peculiar artistic value and of historical significance to Montana.

(5) "Receiving entity" means the Montana historical society or the department of fish, wildlife, and parks.

(6) "Site of significant historical interest" means any building, fixture, real property, or any combination thereof that in the opinion of the receiving entity is of unique and peculiar historical significance to Montana.

(7) "Value of in-kind payment" means the value of an object of significant artistic merit, a site of significant historical interest, or an interest in real property having recreational, conservation, or wildlife value reflecting its intrinsic value to Montana and the public as determined by a certified appraiser selected by the receiving entity.

History: En. Sec. 2, Ch. 736, L. 1985.

72-16-447. Application for in-kind payment — in-kind review committee — review process. (1) Upon written application from a receiving entity, the department of revenue shall notify the revenue oversight committee that such an application has been received.

(2) Upon receipt of such notification, the revenue oversight committee shall appoint an in-kind review committee. The in-kind review committee must be comprised of the following persons, appointed by the revenue oversight committee:

(a) a representative of the receiving entity; and

(b) six members representing the county in which the property proposed for in-kind payment lies or was situated at the time of death of the person whom the donor represents, as follows:

(i) one member of the county commission;

(ii) one state senator;

(iii) one state representative; and

(iv) three residents from the community at large.

(3) The in-kind review committee is a voluntary review committee and is entitled to no compensation or reimbursement of expenses for its review, recommendation, or any other activity.

(4) The in-kind review committee will advise the department and the revenue oversight committee as to the following:

(a) proposed and potential uses of the property;

(b) where applicable, methods and potential sources for rehabilitation, maintenance, and general support of the property alternative to the statement submitted by the receiving entity pursuant to 72-16-448.

(5) Upon completion of its review, the in-kind review committee shall submit a report in written form to the revenue oversight committee and the department, which must be considered in determining whether to recommend that the legislature approve the in-kind payment.

(6) The in-kind review committee has 180 days from the date written application is received by the department from the receiving entity within which to make its report.

(7) The department shall, as provided in 72-16-438, defer payment of inheritance or estate tax that is under review for in-kind payment, so that the tax due is exempt from the interest penalty imposed under 72-16-441.

History: En. Sec. 3, Ch. 736, L. 1985.

72-16-448. Receipt of application for in-kind payment — limitations. (1) Upon receipt of the written application of a receiving entity and the report, if any, of the in-kind review committee, the department of revenue, after consultation with the revenue oversight committee, may recommend that the legislature approve acceptance by the department as in-kind payment of all or a portion of estate or inheritance taxes property consisting of any object of significant artistic merit, any site of significant historical interest, or any interest in real property having recreational, conservation, or wildlife value.

(2) A written application pursuant to subsection (1) must be accompanied by a statement from the receiving entity concerning the methods available for the maintenance, supervision, and care of the object, site, or interest in real property.

(3) The department may accept an in-kind payment if:

(a) the total estate and inheritance taxes due exceed $100,000;

(b) the value of the in-kind payment does not exceed $400,000; and

(c) it has received the approval of the legislature.

History: En. Sec. 4, Ch. 736, L. 1985.

72-16-449. Valuation of in-kind payment. The receiving entity shall certify the value of the in-kind payment to the department of revenue and provide such documentation or other evidence of the value of the in-kind payment as the department may require.

History: En. Sec. 5, Ch. 736, L. 1985.

72-16-450. Receipts of in-kind payments — recording. Title or possession of the in-kind payment must be taken in the name of the state of Montana by the receiving entity. The receiving entity shall promptly notify the department of revenue and the revenue oversight committee of the receipt of the in-kind payment and the proper recording of any interest in real property. Upon such notification, the department shall notify the county treasurer and state treasurer of the in-kind payment. The in-kind payment must be recorded and credited as if money had been received for payment of the inheritance or estate tax.

History: En. Sec. 6, Ch. 736, L. 1985.

72-16-451. Definitions for deferred payment purposes. As used in 72-16-451 through 72-16-465, the following definitions apply:

(1) "Adjusted gross estate" means the clear market value of the property passing by reason of a decedent's death determined under Title 72, chapter 16, without reduction for the federal estate tax due or paid. The sum must be determined on the basis of the facts and circumstances in existence on the date on which the tax imposed by Title 72, chapter 16, is determined, but in

no event later than a date 18 months after the date of the death of the decedent.

(2) "Closely held business amount" means the value of the interest in a closely held business that qualifies under 72-16-452(1).

(3) "Internal Revenue Code" means the Internal Revenue Code of 1954. A reference to a specific section of that code is a reference to that section as it may be labeled or amended.

(4) "Value" means value determined for the purposes of the Montana inheritance tax.

History: En. Sec. 13, Ch. 705, L. 1979.

72-16-452. Deferred payment for transfer of closely held business interest. (1) If the value of an interest in a closely held business that is taxable under Title 72, chapter 16, part 3, as a transfer from a decedent who was at the time of death a resident of this state exceeds 35% of the adjusted gross estate, the personal representative may elect to pay all or part of the tax imposed by Title 72, chapter 16, part 3, in 2 or more but less than 11 equal installments.

(2) The maximum amount of tax that may be paid in installments by each beneficiary is an amount that bears the same ratio to the tax imposed by Title 72, chapter 16, part 3, as the closely held business amount passing to the beneficiary bears to the clear market value of all property passing to the beneficiary, without reduction for the federal estate tax due or paid.

(3) If an election is made under (1) of this section, the first installment must be paid on or before a date selected by the personal representative that is not more than 5 years after the date prescribed by 72-16-441 for the payment of tax without interest. If, however, a credit is claimed on the federal estate tax return for state death taxes on the estate under the provisions of section 2011(a) of the Internal Revenue Code, as amended, an amount of inheritance tax due equal to the federal credit must be paid within the period established in section 2011(c) of the Internal Revenue Code, as amended. Each succeeding installment must be paid on or before the date that is 1 year after the date of the preceding installment. The department may for reasonable cause extend the time for payment of any installment under this section, including any part of an additional tax prorated to any installment, for a reasonable period but not beyond the date that is 12 months after the due date for the last installment.

(4) If an election is made under (1) of this section, the tax due may not be further deferred under the provisions of 72-16-438.

History: En. Sec. 14, Ch. 705, L. 1979; amd. Sec. 12, Ch. 511, L. 1983.

72-16-453. Closely held business defined — qualification. (1) For the purposes of 72-16-452, the term "interest in a closely held business" means:

(a) an interest as a proprietor in a trade or business carried on as a proprietorship;

(b) an interest as a partner in a partnership carrying on a trade or business if:

(i) 20% or more of the total capital interest in the partnership is taxable under Title 72, chapter 16, part 3, as a transfer from the decedent; or

(ii) the partnership had 15 or fewer partners;

(c) stock in a corporation carrying on a trade or business if:

(i) 20% or more in value of the voting stock of the corporation is taxable under Title 72, chapter 16, part 3, as a transfer from the decedent; or

(ii) the corporation had 15 or fewer shareholders.

(2) Determination for qualification under (1) of this section must be made as of the time immediately before the decedent's death.

(3) Stock or a partnership interest held by a husband and wife as joint tenants or tenants in common is treated as owned by one shareholder or one partner, as the case may be.

(4) Property owned directly or indirectly by or for a corporation, partnership, estate, or trust is considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. For the purposes of this subsection, a person is a beneficiary of a trust only if he has a present interest in the trust.

(5) All stock and all partnership interests held by the decedent or by any member of his family within the meaning of section 267(c)(4) of the Internal Revenue Code is treated as being owned by the decedent.

History: En. Sec. 15, Ch. 705, L. 1979.

Cross-References

Business corporations, Title 35, ch. 1.

Partnerships in general, Title 35, ch. 10.

Joint interest defined, 70-1-307.

72-16-454. Farmhouses and other structures taken into account. For the purposes of the 35% requirement of 72-16-452, an interest in a closely held business that is the business of farming includes an interest in residential buildings and related improvements on the farm which are occupied on a regular basis by the owner or lessee of the farm or by persons employed by the owner or lessee for purposes of operating or maintaining the farm.

History: En. Sec. 16, Ch. 705, L. 1979; amd. Sec. 135, Ch. 370, L. 1987.

72-16-455. Partnership interests and stock not readily tradable. (1) If the personal representative elects the benefits of this section, at such time and in such manner as the department may prescribe:

(a) for the purposes of subsection (1)(b)(i) or (1)(c)(i) of 72-16-453, whichever is appropriate, and for the purposes of 72-16-456, any capital interest in a partnership and any nonreadily tradable stock, which after the application of subsections (2) through (5) of 72-16-453 is treated as owned by the decedent, shall be treated as taxable under Title 72, chapter 16, part 3, in determining the value of a transfer from the decedent;

(b) the personal representative shall be treated as having selected under 72-16-452(3) the date prescribed by 72-16-441 for the payment of the tax without interest; and

(c) section 72-16-461 does not apply.

(2) For the purposes of this section, "nonreadily tradable stock" means stock for which at the time of the decedent's death there was no market on the stock exchange or in an over-the-counter market.

History: En. Sec. 17, Ch. 705, L. 1979.

72-16-456. Interests in more than one closely held business. (1) Interests in two or more closely held businesses, with respect to which there is taxable under Title 72, chapter 16, part 3, as a transfer from the decedent 20% or more of the total value of each business, shall be treated as an interest in a single closely held business.

(2) For the purposes of the 20% requirement of (1) of this section, an interest in a closely held business that represents the surviving spouse's interest in property held by the decedent and the surviving spouse as joint tenants or tenants in common shall be treated as taxable under Title 72, chapter 16, part 3, in determining the value of a transfer from the decedent.

History: En. Sec. 18, Ch. 705, L. 1979; amd. Sec. 13, Ch. 511, L. 1983.

72-16-457. Election. An election under 72-16-452 must be made not later than 18 months after the death of the decedent and must be made in such manner as the department prescribes.

History: En. Sec. 19, Ch. 705, L. 1979.

72-16-458. Proration of any additional tax when election made. (1) If an election is made under 72-16-452 to pay any part of the tax imposed by Title 72, chapter 16, part 3, in installments and an additional tax is determined, the additional tax, subject to the limitation provided by 72-16-452(2), shall be prorated to the installments payable under 72-16-452.

(2) (a) The part of the additional tax so prorated to any installment, the date for payment of which has not arrived, shall be collected at the same time as and as part of the installment.

(b) The part of the additional tax so prorated to any installment already paid shall be paid on notice and demand from the department.

(3) This section does not apply if the additional tax is due to negligence, intentional disregard of rules, or fraud with intent to evade tax.

History: En. Sec. 20, Ch. 705, L. 1979.

72-16-459. Election of deferral as to additional tax. (1) If an additional tax is determined under Title 72, chapter 16, part 3, and the estate qualifies under 72-16-452 and the personal representative has not made an election under 72-16-452, the personal representative may elect to pay the additional tax in installments.

(2) An election under this section must be made not later than 60 days after notice and demand for payment of the additional tax has been given by the department and must be made in the manner prescribed by the department.

(3) If an election is made under this section, the additional tax shall, subject to the limitation in 72-16-452(2), be prorated to the installments that would have been due if an election had been timely made under 72-16-452. The part of the additional tax so prorated to any installment the date for payment of which would have arrived shall be paid at the time of the making of the election under this section. The portion of the additional tax prorated to installments, the date for payment of which would not have so arrived, shall be paid at the time such installments would have been due if such an election had been made.

History: En. Sec. 24, Ch. 705, L. 1979.

72-16-460. Security. If the time for payment of any amount of tax has been extended under 72-16-459, the department may require the taxpayer to furnish a bond in an amount not exceeding double the amount with respect to which the extension is granted conditioned upon the payment of the amount extended in accordance with the terms of the extension.

History: En. Sec. 25, Ch. 705, L. 1979.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-16-461. Interest required when payment deferred — rate. (1) If the time for payment of an amount of tax imposed by Title 72, chapter 16, part 3, is extended as provided in 72-16-452 interest on the 4% portion of such amount shall, in lieu of the annual rate provided by 72-16-441, be paid at the rate of 4%. For the purposes of this section, the amount of any additional tax that is prorated to installments payable under 72-16-459 shall be treated as an amount of tax payable in installments under that section.

(2) For the purposes of this section, "4% portion" means the lesser of:

(a) $345,800; or

(b) the amount of the tax imposed by Title 72, chapter 16, part 3, which is extended as provided in 72-16-452.

(3) If the amount of tax imposed by Title 72, chapter 16, part 3, that is extended exceeds the 4% portion, any payment of a portion of such amount shall, for the purpose of computing interest for periods after such payment, be treated as reducing the 4% portion by an amount that bears the same ratio to the amount of such payment as the amount of the 4% portion, determined without regard to this section, bears to the amount of tax that is extended as provided in 72-16-452.

History: En. Sec. 27, Ch. 705, L. 1979.

72-16-462. Interest — when payable. (1) If the time for payment of any amount of tax has been extended under 72-16-451 through 72-16-465, interest payable under 72-16-461 on any unpaid portion of such amount:

(a) attributable to the first 5 years after the date prescribed by 72-16-441 for the payment of the tax without interest shall be paid annually;

(b) attributable to any period after the 5-year period referred to in (1)(a) of this section shall be paid annually at the same time as and as part of each installment payment of the tax.

(2) In the case of an additional tax to which 72-16-458 applies that is determined after the close of the 5-year period referred to in (1)(a) of this section, interest attributable to such 5-year period and interest assigned to any installment the date for which has arrived on or before the date of the assessment of the additional tax must be paid on notice and demand from the department.

(3) If the personal representative has selected a period shorter than 5 years, the shorter period shall be substituted for 5 years in (1) and (2) of this section.

History: En. Sec. 21, Ch. 705, L. 1979.

72-16-463. Failure to pay installment — acceleration of payment. (1) Except as provided in subsection (2), if any installment of principal or interest under 72-16-451 through 72-16-465 is not paid on or before the date fixed for its payment, including any extension of time for the payment of the installment, the unpaid portion of the tax payable in installments must be paid on notice and demand from the department.

(2) If any installment of principal or interest under 72-16-451 through 72-16-465 is not paid on or before the date determined under subsection (1) but is paid within 6 months of the date, the provisions of subsection (1) do not apply with respect to such payment, the provisions of 72-16-461 may not apply with respect to the determination of interest on such payment, and there is imposed a penalty in an amount equal to the product of 5% of the amount of such payment multiplied by the number of months or fractions thereof after such date and before payment is made.

History: En. Sec. 23, Ch. 705, L. 1979; amd. Sec. 14, Ch. 511, L. 1983.

72-16-464. Acceleration of payment — other grounds. (1) The extension of time for payment of tax provided in 72-16-452 shall cease to apply and any unpaid portion of the tax payable must be paid upon notice and demand of the department if any portion of an interest in a closely held business that qualifies under 72-16-452 is distributed, sold, exchanged, or otherwise disposed of or if money and other property attributable to such an interest is withdrawn from the trade or business and the aggregate of such distributions, sales, exchanges, or other dispositions and withdrawals equals or exceeds 50% of the value of such interest.

(2) In the case of a distribution in redemption of stock to which section 303 of the Internal Revenue Code or so much of section 304 of the Internal Revenue Code as relates to section 303 applies:

(a) subsection (1) of this section does not apply with respect to the stock redeemed and, for the purposes of subsection (1), the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed; and

(b) subsection (1) of this section does not apply with respect to withdrawals of money and other property distributed and, for the purposes of subsection (1), the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed.

(3) Subsection (1) of this section does not apply to an exchange of stock pursuant to a plan of reorganization described in (D), (E), or (F) of section 368(a)(1) of the Internal Revenue Code or to an exchange to which section 355 of the Internal Revenue Code or so much of section 356 of the Internal Revenue Code applies to section 355, but any stock received in such an exchange shall be treated for purposes of subsection (1) as an interest qualifying under 72-16-452.

(4) Subsection (1) of this section does not apply to a transfer of property of the decedent to a person entitled by reason of the decedent's death to receive such property under the decedent's will, intestate succession, or a trust created by the decedent; nor does it apply to a series of subsequent transfers of the property by reason of death of the transferor, so long as each transfer is to a member of the family within the meaning of section 267(c)(4) of the Internal Revenue Code.

History: En. Sec. 22, Ch. 705, L. 1979; amd. Sec. 15, Ch. 511, L. 1983.

72-16-465. Effect of payment deferral on statute of limitations. The running of the period of limitations for collection of any tax imposed by Title 72, chapter 16, part 3, is suspended for the period of any extension of time for payment granted under 72-16-452.

History: En. Sec. 26, Ch. 705, L. 1979.

72-16-466 through 72-16-470 reserved.

72-16-471. Definitions for lien on deferred tax purposes. As used in 72-16-471 through 72-16-482, the following definitions apply:

(1) "Deferral period" means the period for which the payment of tax is deferred under 72-16-452.

(2) "Deferred amount" means the aggregate amount deferred under 72-16-452 determined as of the date prescribed by 72-16-441 for payment without interest of the tax imposed by Title 72, chapter 16, part 3.

(3) "Lien property" means interests in real and other property to the extent such interests can be expected to survive the deferral period and are designated in the agreement referred to in 72-16-474.

(4) "Required interest amount" means the aggregate amount of interest that will be payable over the first 4 years of the deferral period with respect to the deferred amount determined as of the date prescribed for payment without interest of the tax imposed by Title 72, chapter 16, part 3.

History: En. Sec. 28, Ch. 705, L. 1979.

72-16-472. Lien for tax deferred. In the case of any estate with respect to which an election has been made under 72-16-452, if the personal representative makes an election under this section at such time and in such manner as the department may prescribe and files the agreement referred to in 72-16-474 the deferred amount, plus any interest or additional amount, shall be a lien in favor of the state on the lien property.

History: En. Sec. 29, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-473. Application of definitions to additional tax. In the case of an additional tax, a separate deferral period, deferred amount, and required interest amount shall be determined as of the due date of the first installment after the additional tax is prorated to installments under 72-16-452.

History: En. Sec. 39, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-474. Agreement consenting to lien. The agreement is a written agreement signed by each person in being who has an interest, whether or not in possession, in any property designated in the agreement:

(1) consenting to the creation of the lien under 72-16-472 with respect to the property; and

(2) designating a responsible person to be agent for the beneficiaries of the estate and for persons who have consented to the creation of the lien in dealings with the department on matters arising under 72-16-452 or 72-16-472.

History: En. Sec. 32, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-475. Maximum value of required lien property. (1) The maximum value of the property that the department may require as lien property with respect to any estate is a value that is not greater than the sum of the deferred amount and the required interest amount.

(2) For the purposes of (1) of this section, the value of any property is determined as of the date prescribed by 72-16-441 for payment of the tax without interest and is determined by taking into account any encumbrances.

History: En. Sec. 30, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-476. Partial substitution of bond for lien. If the value required as lien property exceeds the value of the interests in property covered by the agreement referred to in 72-16-474, the department may accept a bond in an amount equal to such excess conditioned on the payment of the amount extended in accordance with the terms of the extension.

History: En. Sec. 31, Ch. 705, L. 1979.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-477. Filing of lien. The lien imposed by 72-16-472 is not valid against a purchaser, holder of a security interest, construction lien, or judgment lien creditor until a warrant for distraint has been filed by the department pursuant to 72-16-432.

History: En. Sec. 33, Ch. 705, L. 1979; amd. Sec. 3, Ch. 131, L. 1989.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-478. Period of lien. The lien imposed by 72-16-472 arises at the time a warrant for distraint is filed under 72-16-432 and continues until liability for the deferred amount is satisfied or becomes unenforceable by reason of lapse of time.

History: En. Sec. 34, Ch. 705, L. 1979; amd. Sec. 4, Ch. 131, L. 1989.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-479. Priorities. (1) A lien filed under 72-16-472 is not valid:

(a) as against real property tax and special assessment liens;

(b) in the case of real property subject to a lien for repair or improvement, as against a construction lienor; or

(c) as against a security interest set forth in paragraph 3 of section 6323(c) of the Internal Revenue Code, whether the security interest came into effect before or after the tax lien filing.

(2) Subsections (1)(b) and (1)(c) of this section do not apply to any security interest that came into existence after the date on which the department filed notice that payment of the deferred amount has been accelerated under 72-16-464.

History: En. Sec. 35, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-480. Lien in lieu of other tax liens. If there is a lien on property under 72-16-472, the lien under 72-16-432 does not apply to the property with respect to the same estate.

History: En. Sec. 36, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-481. Lien in lieu of bond. The department may not require the furnishing of any bond for the payment of tax to which an agreement that meets the requirements of 72-16-474 applies.

History: En. Sec. 38, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-482. Additional lien property. (1) If at any time the value of the property covered by the agreement is less than the unpaid portion of the deferred amount and the required interest amount, the department may require the addition of property to the agreement. The department may not require that the value of the property covered by the agreement exceed the unpaid portion.

(2) If property having the required value is not added to the property covered by the agreement or if other security equal to the required value is not furnished within 90 days after notice and demand by the department, the failure to comply shall be treated as an act accelerating payment of the installments under 72-16-464.

History: En. Sec. 37, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-483 through 72-16-490 reserved.

72-16-491. Lien for additional tax attributable to farm and closely held business property. (1) In the case of any interest in qualified real property within the meaning of 72-16-331(16), an amount equal to the adjusted tax difference attributable to such interest within the meaning of 72-16-338(3) is a lien in favor of the state on the property in which such interest exists.

(2) The lien imposed by this section shall arise at the time an election is filed under 72-16-333 and continues with respect to any interest in the qualified real property until:

(a) the liability for tax under 72-16-338 with respect to such interest has been satisfied or has become unenforceable by reason of lapse of time; or

(b) until it is established to the satisfaction of the department that no further tax liability may arise under 72-16-338 with respect to such interest.

(3) Sections 72-16-477, 72-16-479, and 72-16-480 apply with respect to a lien imposed by this section.

History: En. Sec. 40, Ch. 705, L. 1979; amd. Sec. 24, Ch. 511, L. 1983.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-492. Substitution of security for lien. The department may provide by rule for the substitution of security for the lien imposed by 72-16-491.

History: En. Sec. 41, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-493. Subordination of liens. The department may consent to the subordination of a lien imposed by 72-16-472 or 72-16-491 upon any part of the property subject to the lien if the state will be adequately secured after the subordination.

History: En. Sec. 42, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

Part 5

Joint Tenancies and Life Estates Determination of Tax — Termination

72-16-501. Interest of decedent terminated upon death. The interest of the decedent in property held in joint tenancy terminates upon his death.

History: En. 91-4471 by Sec. 2, Ch. 409, L. 1977; R.C.M. 1947, 91-4471(2).

Cross-References

Joint interest defined, 70-1-307.

72-16-502. Determination and payment of tax when no personal representative — procedure. (1) For the purposes of this section, a decedent is one who dies leaving no property which requires the appointment of a personal representative and:

(a) was the owner of a life estate which terminated at his death;

(b) was the owner of property with another or others as a joint tenant with right of survivorship and not as a tenant in common; or

(c) was the owner of any other interest in property requiring the determination of inheritance tax because of his death.

(2) Upon the death of a decedent, a remainderman, surviving joint tenant, or other interested party shall file with the department of revenue:

(a) a copy of the death certificate;

(b) a verified application in a form prescribed by the department containing such information as the department considers necessary; and

(c) evidence of the instruments which created the life estate, joint tenancy, or other interest requiring determination of inheritance tax, if required by the department.

(3) Upon receipt of the application, the department shall:

(a) stamp the filing date upon the application;

(b) issue a certificate showing the inheritance tax due, if any;

(c) affix the certificate to a certified copy of the application and return the same to the applicant or his attorney; and

(d) affix a copy of the certificate to the original application and keep it on file with the department.

(4) The applicant shall pay the inheritance tax determined to the county treasurer for transmittal to the state treasurer. The county treasurer shall issue a receipt for the payment of the tax.

(5) If disputes arise as to tax computation, they shall be resolved as provided under the laws applicable to the determination of inheritance taxes in estates.

History: En. 91-4470 by Sec. 1, Ch. 409, L. 1977; R.C.M. 1947, 91-4470.

72-16-503. Additional filings required when real property involved and no representative — release of lien. (1) If an interest in real property is involved under 72-16-502, the applicant shall record with the clerk and recorder of each county in which the real property or any part thereof is located a document containing those matters required by 7-4-2613(3).

(2) The recording of the documents under subsection (1) constitutes release of any lien for inheritance taxes.

History: En. 91-4471 by Sec. 2, Ch. 409, L. 1977; R.C.M. 1947, 91-4471(1), (3); amd. Sec. 2, Ch. 377, L. 1981.

72-16-504. Determination and payment of tax when personal representative appointed — procedure. If a decedent dies leaving property which requires the appointment of a personal representative and was also an owner of property as described in 72-16-502(1), the remainderman, surviving joint tenant, personal representative, or other interested party may have the inheritance tax determined and the joint tenancy terminated or ownership transferred as provided in 72-16-501 through 72-16-503 by filing with the department:

(1) the information listed in 72-16-502(2); and

(2) the name of the county of administration or probate and the court file number.

History: En. 91-4472 by Sec. 3, Ch. 409, L. 1977; R.C.M. 1947, 91-4472.

72-16-505. Attorney not required for transfer of title — maximum attorney's fee. (1) If a decedent as defined in 72-16-502 leaves a surviving spouse, the surviving spouse is not required to hire an attorney to transfer title to the property involved.

(2) If an attorney is hired by the surviving spouse, the attorney's fee for services required in terminating a joint tenancy or transferring other types of ownership listed in 72-16-502 may not exceed 2% of the value of the interest passing to the spouse.

History: En. 91-4473 by Sec. 4, Ch. 409, L. 1977; R.C.M. 1947, 91-4473.

Part 6

Apportionment of Taxes

72-16-601. Definitions. For purposes of this part, the following definitions apply:

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state.

(2) "Fiduciary" means personal representative or trustee.

(3) "Person" means any individual, partnership, association, joint-stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

(4) "Person interested in the estate" means any person entitled to receive or who has received from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee.

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(6) "Tax" means the federal estate tax and any additional inheritance, estate, or death taxes imposed by the laws of any state and interest and penalties imposed in addition to the tax.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(1).

72-16-602. Authority of court of administration to determine apportionment. The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose, may determine the apportionment of the tax.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(a).

72-16-603. Tax — how apportioned. (1) Except as provided in subsection (3) and unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose.

(2) If the decedent's will directs a method of apportionment of tax different from the method described in this part, the method described in the will controls.

(3) If the liabilities of persons interested in the estate as described in this part differ from those which result under the federal estate tax law, the liabilities imposed by the federal law control and the balance of this part applies as if the resulting liabilities had been prescribed in this part.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(2); amd. Sec. 16, Ch. 511, L. 1983.

72-16-604. Equitable power of court to vary manner of apportionment. If the court finds that it is inequitable to apportion interest and penalties in the manner provided in 72-16-603 because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(b).

72-16-605. Distribution prior to apportionment — bond required. If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(4)(b).

72-16-606. No apportionment as between temporary interest and remainder. No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(6).

72-16-607. Allowance for exemptions, deductions, and credits. (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift, but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or devise is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in 72-16-603 and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(5).

72-16-608. Powers of personal representative in relation to satisfaction of tax liability. (1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest.

(2) If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate.

(3) If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this part.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(4)(a).

72-16-609. Penalties and interest charged to fiduciary when caused by his negligence. If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(c).

Cross-References

Liability for negligence, 27-1-701.

72-16-610. Action to recover apportioned tax — limitations on duty to initiate — uncollectibility. Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the 3-month period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(7).

72-16-611. Action to recover apportioned tax — determination of court prima facie correct. In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this part, the determination of the court in respect thereto made pursuant to 72-16-602 shall be prima facie correct.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(d).

72-16-612. Action by foreign representative to recover apportioned tax. A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state, or of a death duty due by a decedent's estate to another state from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action, the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(8).

Part 7

Estates With Multistate Aspects — Securities Transfer

Part Cross-References

Fiduciary security transfers, Title 30, ch. 10, part 4.

72-16-701. Transfer of in-state securities by foreign representative — payment of tax. If a foreign executor, administrator, or trustee shall assign or transfer any stocks, bonds, mortgages, or other securities, in this state or within the jurisdiction of this state standing in the name of a decedent or in trust for a decedent liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state treasurer on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(1).

72-16-702. Duties of holder of securities or assets of nonresident decedent — prerequisites to transfer — exception. (1) No safe deposit company, bank, or other institution or person or persons holding securities or assets of a nonresident decedent or any corporation organized under the laws of this state in which a nonresident decedent held stock, bonds, mortgages, or other securities at his decease shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent or upon their order or request unless notice of the time and place of such intended transfer be served upon the department of revenue at least 10 days prior to the transfer; nor shall any such safe deposit company, bank, or other institution or person or persons or any corporation deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the department, personally or by representative, to examine said securities or assets at any time before such delivery or transfer.

(2) Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided shall render said safe deposit company, trust company, bank, or other institution or person or persons or such corporation liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws.

(3) The department may issue a certificate authorizing the transfer of any such stock, securities, or assets whenever it appears to the satisfaction of the department that no tax is due thereon.

(4) The foregoing provisions shall not apply to shares of stock in any Montana corporation held by a nonresident of Montana at the time of his death whose death occurred on or after January 30, 1945 and who was at the time of his death domiciled in any other district or state of the United States, provided reciprocal rights are granted by such district or state of domicile similar to 72-16-801, and in such event this section shall not apply to the

transfer of stocks, bonds, mortgages, or other securities exempt from taxation under the provisions of 72-16-801, and a Montana corporation or its agent may transfer stocks, bonds, mortgages, and other securities without any liability for the tax imposed under the provisions of the inheritance tax laws where there are reciprocal rights as set forth in 72-16-801, and in such event no application for consent to transfer such stock need be made to the department, and the corporation or its duly authorized transfer agent may transfer such shares of stock upon its books without any such application or consent to transfer.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(2).

72-16-703. Holder of securities in Montana corporation not to transfer without retaining portion for tax. No holding company or other corporation subject to the provisions of this part shall deliver or transfer any such stocks, bonds, mortgages, or other securities of a Montana corporation without retaining a sufficient portion thereof to pay any tax which may thereafter be assessed under the provisions of parts 1 through 8 on account of such transfer, except upon order of the proper court or a certificate of consent of the department of revenue.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(part).

72-16-704. Apportionment of deductions when property partly within and partly without the state. Whenever a tax is due from the estate, or the beneficiaries therein, of any resident or nonresident decedent upon the transfer of any property when the property or the estate left by such decedent is partly within and partly without this state or upon any stocks, bonds, mortgages, or other securities representing property or estate partly within and partly without this state, any beneficiary of such estate is entitled to deduct only his proper proportion of that portion of the total debts and expenses of administration which the gross estate in Montana or within its jurisdiction bears to the gross estate both within and without this state. As to his Montana exemption, each beneficiary is entitled to deduct only that portion represented by the ratio between his interest in the property in this state or within its jurisdiction and his interest in the entire estate.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(3); amd. Sec. 27, Ch. 6, L. 1979.

72-16-705. Department to secure information — rulemaking. The department of revenue shall require such reports and information and shall make such orders and rules as it may deem necessary to enable the department to secure the necessary information from domestic corporations and to ascertain the amount of and collect such tax.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(part).

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

72-16-706. Penalty. Any corporation or holding company violating the provisions of this part shall be liable to the state for the amount of the tax together with a penalty of 10% thereof.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(5).

Part 8

Nonresident Decedents

72-16-801. Exemption of intangible personal property of nonresident decedent — when. The tax imposed by parts 3, 7, and 9 and this part in respect of personal property, except tangible personal property having an actual situs in this state, is not payable if:

(1) the decedent is a resident of a state or territory of the United States which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state, except tangible personal property having an actual situs in that state or territory; or

(2) the laws of the state or territory of residence of the nonresident decedent at the time of the transfer contained a reciprocal provision under which nonresidents of that state were exempted from transfer taxes or death taxes of every character in respect of personal property, except tangible personal property having an actual situs in that state, provided the state or territory of residence of such nonresident decedent allowed a similar exemption to residents of this state.

History: En. Sec. 1, Ch. 3, L. 1945; R.C.M. 1947, 91-4413; amd. Sec. 28, Ch. 6, L. 1979.

72-16-802. Nonresident decedent — application to department for determination of tax — affidavit. (1) Any personal representative, trustee, heir, devisee, or legatee of a nonresident decedent leaving no estate requiring administration in this state desiring to transfer any stocks, bonds, mortgages, or other securities or other personal property in this state or within the jurisdiction of this state may make application to the department of revenue for the determination whether there is any tax due upon account of the transfer thereof and the amount of any such tax.

(2) Such applicant shall furnish to the department an affidavit:

(a) setting forth a description and statement of the property owned by the decedent situated within this state or within its jurisdiction at the time of his death and the true value of said property at the time of decedent's death;

(b) setting forth a description and statement of the true value of all property owned by the decedent at the time of his death situated outside of this state and without its jurisdiction; and

(c) containing a schedule or statement of all valid claims against the estate of the decedent, including the expenses of his last illness, funeral expenses, and expenses of administering his estate.

(3) Such applicant shall also, at the same time, furnish the department with:

(a) a certified copy of the last will of the decedent, in case he died testate or an affidavit setting forth the names, ages, and residence of the heirs at law of decedent in case he died intestate;

(b) the proportion of the entire estate of said decedent inherited by each of said persons; and

(c) the relation, if any, which each legatee, devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made.

(4) Such affidavit shall be subscribed and sworn to by the personal representative of the decedent or some other person having knowledge of the facts therein set forth.

(5) The statement contained in any affidavits, statements, or schedules as to values or otherwise shall not be binding upon the department in case it believes the same to be erroneous or untrue.

History: **En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.15, R.C.M. 1935; amd. Sec. 82, Ch. 391, L. 1973; R.C.M. 1947, 91-4425(part).**

Cross-References

Fiduciary security transfers, Title 30, ch. 10, part 4.

72-16-803. Department to determine tax. From the information so furnished it and such other information as it may be able to obtain with reference thereto, the department of revenue shall with reasonable diligence proceed to ascertain and determine the amount of tax, if any, due under the provisions of parts 1 through 8 and notify the person making the application of the amount of the tax so ascertained and determined to be due; or, in case there is no tax to be paid, the department shall issue a consent to the transfer of the property so owned by the decedent.

History: **En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.15, R.C.M. 1935; amd. Sec. 82, Ch. 391, L. 1973; R.C.M. 1947, 91-4425(part).**

72-16-804. Appeal from determination of department. Any person aggrieved by the determination of the department of revenue in any matter provided for in 72-16-802 or 72-16-803 may, within 30 days thereafter, appeal to the district court of Lewis and Clark County by serving on the department a notice in writing setting forth his objections to such determination and by filing such notice, after so serving the same, in the office of the clerk of such court, and thereupon and within 10 days after the service of such notice on it the department shall transmit full and complete copies of all original papers and records which have been filed with it in relation to such application to the clerk of said district court, and thereupon the district court shall have jurisdiction of such application and proceeding. Upon 10 days' notice given by either applicant or the department, the matter may be brought on for hearing and determination by said court, either in term time or in vacation, at a general or special term of court or at chambers, as may be directed by the order of the court.

History: **En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.15, R.C.M. 1935; amd. Sec. 82, Ch. 391, L. 1973; R.C.M. 1947, 91-4425(3).**

72-16-805. Procedure of department when application not made. (1) Whenever any nonresident decedent leaving no estate requiring administration in this state shall leave any stocks, bonds, mortgages, or other securities or other personal property within the state or within the jurisdiction thereof and no personal representative, trustee, heir, devisee, or legatee of such nonresident decedent has made application to the department of revenue for the determination as to whether there is any tax due for the transfer thereof and the amount of such tax, if any, the department, upon such matter being called to its attention, shall make an order and cause a copy thereof to be served upon the personal representative, trustee, heirs, devisees, or legatees of such nonresident decedent ordering and directing that a statement and return, under oath, containing the statements and information prescribed in 72-16-802 be filed with such department within 60 days from the date of such order or within such further time as the department may grant therefor.

(2) If such statement is not filed with the department within such time, the department may then procure such information in any manner it may deem advisable.

(3) Upon the filing of such statement or the procuring of such information by the department in the event of a failure to file the same in compliance with such order, the department shall proceed in the same manner as prescribed by 72-16-803 and all provisions of 72-16-804 with reference to hearings and appeals shall be applicable thereto.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.16, R.C.M. 1935; amd. Sec. 83, Ch. 391, L. 1973; R.C.M. 1947, 91-4426.

Part 9
Estate Tax

72-16-901. Purpose — liberal construction to effect. It is hereby declared to be the intent and purpose of this part to obtain for this state the benefit of the credit allowed under the provisions of the Internal Revenue Code, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes, and the same shall be liberally construed to effect this purpose.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(g).

72-16-902. Applicability of other tax provisions. The provisions of parts 1 through 8 relating to the tax on inheritances and transfers shall apply to the taxes imposed by this part, insofar as the same are applicable and not in conflict with the provisions hereof.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(h).

72-16-903. Taxable situs of property. For the purpose of this tax, the taxable situs of property shall be the same as the taxable situs for inheritance tax purposes.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).

72-16-904. Estate tax imposed. In addition to the inheritance taxes hereinabove imposed, an estate tax is hereby imposed upon the transfer of the estate of every decedent leaving an estate which is subject to the federal estate tax imposed by the United States of America under the applicable provisions of the Internal Revenue Code and which has, in whole or in part, a taxable situs in this state.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).

72-16-905. Estate tax — how computed. The tax hereby imposed upon the transfer of each such estate shall be equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state, less the inheritance taxes, if any, due this state, it being the purpose and intent of this part to impose only such additional taxes hereunder as may be necessary to give this state the full benefit of the maximum tax credit allowable against the federal estate tax imposed with respect to a decedent's estate which has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, such maximum tax credit shall be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by the percentage which the value of the portion of the decedent's estate which has a taxable situs in this state bears to the value of the entire estate.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).

72-16-906. Required filings. The personal representative of the estate of any decedent whose estate is subject to the payment of a United States estate tax shall file a duplicate of the United States estate tax return with the department of revenue. He shall also file with the department a certificate or other evidence from the internal revenue service showing the amount of the United States estate tax as computed by the internal revenue service.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part); amd. Sec. 29, Ch. 6, L. 1979; amd. Sec. 28, Ch. 582, L. 1989.

72-16-907. Department to determine tax — rehearing and appeal. (1) The department of revenue shall enter an order determining such state estate tax and the amount thereof so due and payable.

(2) Any person in interest aggrieved by such determination shall have the same right to apply for district court determination and of rehearing and appeal as is now provided for in the determination of inheritance taxes.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).

72-16-908. Persons liable for tax. Administrators, executors, trustees, and grantees under a conveyance made during the grantor's life and taxable hereunder shall be liable for such taxes with interest until the same have been paid.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(c).

72-16-909. When and where tax payable — interest. The estate tax shall be payable to the county treasurer of the county in which such estate is being probated in the same manner provided for the payment of inheritance taxes in 72-16-441.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(b); amd. Sec. 1, Ch. 166, L. 1979.

72-16-910. Extension of time for payment. The district court of the county in which such estate is being probated may, for cause shown, extend the time of payment of said tax whenever the circumstances of the case require.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(e).

72-16-911. Tax lien. Said taxes and interest shall be and remain a lien on the property for a period of 10 years from the date of death, unless sooner paid.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(d).

Cross-References

Federal tax liens, Title 71, ch. 3, part 2.

72-16-912. Collection and deposit of tax. The tax imposed herein shall be collected by the several county treasurers or the department of revenue for deposit with the state treasurer.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).

Part 10

Generation-Skipping Transfer Tax

72-16-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Direct skip" has the meaning given in section 2612(c), Internal Revenue Code.

(3) "Federal generation-skipping transfer tax" means the tax imposed by section 2601, Internal Revenue Code.

(4) "Generation-skipping transfer" means the generation-skipping transfer defined in section 2611, Internal Revenue Code, when the original transferor is a resident of Montana on the date of the original transfer or when the property is real or personal property located in Montana.

(5) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(6) "Original transferor" means any grantor, donor, trustor, or testator who by grant, gift, trust, or will makes a transfer of real or personal property that results in a federal generation-skipping transfer tax.

History: En. Sec. 1, Ch. 273, L. 1991.

72-16-1002. Imposition of tax. (1) A tax is imposed on each generation-skipping transfer, other than a direct skip, occurring at the same time and as a result of the death of an individual, in an amount equal to the maximum federal credit allowable under section 2604, Internal Revenue Code.

(2) If any of the property transferred is real property in another state or personal property located in another state that requires the payment of a tax for which credit is received against the federal generation-skipping transfer tax, the tax due under subsection (1) must be reduced by an amount that bears the same ratio to the total state tax credit allowable for federal generation-skipping transfer tax purposes as the value of the property taxable in the other state bears to the value of the gross generation-skipping transfer for federal generation-skipping transfer tax purposes.

History: En. Sec. 2, Ch. 273, L. 1991.

72-16-1003. Returns — payment. (1) A person required to file a return reporting a generation-skipping transfer under federal law shall file a duplicate of the federal return with the department and shall file any other information as the department may require. The return must be filed on or before the last day allowed for filing the federal return. A copy of amended or supplemental federal returns must be submitted to the department at the time it is filed with the internal revenue service.

(2) The tax imposed by 72-16-1002 must be paid on or before the deadline for filing the return. The tax must be paid to the department and deposited in the general fund.

History: En. Sec. 3, Ch. 273, L. 1991.

72-16-1004. Liability for tax — interest on delinquent tax. The person liable for payment of the federal generation-skipping transfer tax is liable for the tax imposed under 72-16-1002. If the tax imposed by 72-16-1002 is not paid within the time established in 72-16-1003, the tax is delinquent and draws interest at the rate of 10% a year.

History: En. Sec. 4, Ch. 273, L. 1991.

72-16-1005. Tax lien. The tax imposed by 72-16-1002 is a lien on the property subject to the tax for a period of 10 years from the time of the generation-skipping transfer. The payment of the tax and any interest due releases the lien and discharges the liability for payment of the tax. If the lien is not perfected by recording, a transfer for value to a bona fide purchaser divests the property of the lien. If the lien is perfected by recording, the rights of the state under the lien have priority over all subsequent mortgages, purchasers, or judgment creditors. The department may release the lien prior to the payment of the tax if adequate security for payment of the tax is given to the department.

History: En. Sec. 5, Ch. 273, L. 1991.

72-16-1006. Duty to claim maximum credit. A person liable for payment of the tax imposed under 72-16-1002 shall claim the maximum federal credit allowable for the portion of the state generation-skipping transfer tax paid with respect to property included in a taxable generation-skipping transfer. A person claiming less than the maximum federal credit allowable is liable for the full amount of the tax imposed under 72-16-1002.

History: En. Sec. 6, Ch. 273, L. 1991.

72-16-1007. Applicability of other taxes — rulemaking. The provisions of Title 72, chapter 16, parts 1 through 8, relating to the tax on inheritances and transfers, apply to 72-16-1001 through 72-16-1006 unless they are in conflict with this part. The department shall adopt rules necessary for the administration and enforcement of this part.

History: En. Sec. 7, Ch. 273, L. 1991.

CHAPTER 17

ANATOMICAL GIFT ACT

Part 1 — General Provisions

72-17-101. Short title.
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72-17-211. Repealed.
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72-17-213. Routine inquiry and required request — search and notification.
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Part 3 — Regulation — Qualifications

72-17-301. Rights and duties at death.
72-17-302. Sale or purchase of parts prohibited.
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Chapter Cross-References

Organ procurement program required, 50-5-212.

HIV antibody testing — testing of donors of organs, tissues, and semen required — penalty, 50-16-1008.

Indication on driver's license of intent to make anatomical gift, 61-5-301.

Part 1

General Provisions

72-17-101. Short title. This chapter may be cited as the "Uniform Anatomical Gift Act".

History: En. Sec. 9, Ch. 340, L. 1969; R.C.M. 1947, 69-2323.

72-17-102. Definitions. As used in this chapter the following definitions apply:

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(5) "Donor" means an individual who makes a gift of all or part of the individual's body.

(6) "Enucleator" means an individual who is certified pursuant to 72-17-311 to remove or process eyes or parts of eyes.

(7) "Hospital" means a facility licensed, accredited, or approved under the laws of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(8) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(9) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(10) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(11) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(12) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Technician" means an individual who is certified by the state board of medical examiners to remove or process a part.

History: En. Sec. 1, Ch. 340, L. 1969; R.C.M. 1947, 69-2315; amd. Sec. 1, Ch. 403, L. 1983; amd. Sec. 3, Ch. 540, L. 1989.

Cross-References

Ophthalmologist and physician licensure, Title 37, ch. 3.

72-17-103. Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 8, Ch. 340, L. 1969; R.C.M. 1947, 69-2322.

72-17-104. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 7, Ch. 340, L. 1969; R.C.M. 1947, 69-2321(c).

72-17-105 through 72-17-107 reserved.

72-17-108. Coordination of procurement and use. Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

History: En. Sec. 14, Ch. 540, L. 1989.

Cross-References

Organ procurement program required, 50-5-212.

Part 2

Execution and Operation of Anatomical Gift

72-17-201. Making, amending, revoking, and refusing to make anatomical gifts by an individual. (1) An individual who is at least 18 years of age may:

(a) make an anatomical gift for any of the purposes stated in 72-17-202;

(b) limit an anatomical gift to one or more of those purposes; or

(c) refuse to make an anatomical gift.

(2) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and must state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon the death of the testator, whether or not the will is probated. If, after the testator's death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(6) A donor may amend or revoke an anatomical gift not made by will only by:

(a) a signed statement;

(b) an oral statement made in the presence of two individuals;

(c) any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

(d) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6).

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(9) (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(i) a writing signed in the same manner as a document of gift;

(ii) a statement attached to or imprinted on a donor's motor vehicle operator's license; or

(iii) any other writing used to identify the individual as refusing to make an anatomical gift.

(b) During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under 72-17-214 or on a removal or release of other parts under 72-17-215.

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9).

History: En. Sec. 2, Ch. 340, L. 1969; R.C.M. 1947, 69-2316(a) thru (c); amd. Sec. 4, Ch. 540, L. 1989.

Cross-References

Indication on driver's license of intent to make anatomical gift, 61-5-301.

72-17-202. Persons who may become donees — purposes for which anatomical gifts may be made. (1) The following persons may become donees of anatomical gifts for the purposes stated:

(a) a hospital, surgeon, physician, or procurement organization for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;

(b) an accredited medical or dental school, college, or university for education, research, advancement of medical or dental science; or

(c) a designated individual for therapy or transplantation needed by that individual.

(2) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by a hospital.

(3) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under 72-17-214, the donee may not accept the anatomical gift.

History: En. Sec. 3, Ch. 340, L. 1969; R.C.M. 1947, 69-2317; amd. Sec. 2, Ch. 403, L. 1983; amd. Sec. 5, Ch. 540, L. 1989.

72-17-203 through 72-17-206. Repealed. Sec. 19, Ch. 540, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

72-17-203. En. Sec. 2, Ch. 340, L. 1969; R.C.M. 1947, 69-2316(e).

72-17-204. En. Sec. 4, Ch. 340, L. 1969; R.C.M. 1947, 69-2318(a), (b), (e); amd. Sec. 1, Ch. 459, L. 1985; amd. Sec. 38, Ch. 443, L. 1987.

72-17-205. En. Sec. 4, Ch. 340, L. 1969; R.C.M. 1947, 69-2318(c).

72-17-206. En. Sec. 4, Ch. 340, L. 1969; R.C.M. 1947, 69-2318(d); amd. Sec. 136, Ch. 370, L. 1987.

72-17-207. Examination — autopsy — liability. (1) An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(2) The provisions of this chapter are subject to the laws of this state governing autopsies.

(3) A hospital, physician, surgeon, coroner, enucleator, technician, nurse, or other person who acts in accordance with this chapter or with the applicable anatomical gift act of another state or attempts in good faith to do so is not liable for that act in a civil action or criminal proceeding.

(4) An individual who makes an anatomical gift pursuant to 72-17-201 or 72-17-214 and the individual's estate are not liable for any injury or damage that may result from the making or use of the anatomical gift.

History: En. Sec. 2, Ch. 340, L. 1969; R.C.M. 1947, 69-2316(d); amd. Sec. 6, Ch. 540, L. 1989.

72-17-208. Delivery of document of gift. (1) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(2) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.

History: En. Sec. 5, Ch. 340, L. 1969; R.C.M. 1947, 69-2319; amd. Sec. 7, Ch. 540, L. 1989.

Cross-References

Indication on driver's license of intent to make anatomical gift, 61-5-301.

72-17-209. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 6, Ch. 340, L. 1969; R.C.M. 1947, 69-2320.

72-17-210. Renumbered 72-17-301 by Code Commissioner, 1983.

72-17-211. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 1, Ch. 219, L. 1987.

72-17-212. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 2, Ch. 219, L. 1987.

72-17-213. Routine inquiry and required request — search and notification. (1) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to 72-17-214(1). The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in 72-17-202 or if there are medical or emotional conditions under which the request would contribute to severe emotional distress. An entry must be made in the medical record of the patient, stating the name and affiliation of the individual making the request and the name, response, and relationship to the patient of the person to whom the request was made. The department shall adopt rules to implement this subsection.

(2) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(a) a law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual whom the searcher believes is dead or near death; and

(b) a hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

(3) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (3)(a) and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents and the document or other evidence must be sent to the hospital.

(4) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to 72-17-214(1) or a release and removal of a part has been permitted pursuant to 72-17-215, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(5) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

History: En. Sec. 13, Ch. 540, L. 1989.

Cross-References

Organ procurement program required, 50-5-212.

Indication on driver's license of intent to make anatomical gift, 61-5-301.

72-17-214. Making, revoking, and objecting to anatomical gifts by others. (1) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift:

(a) the spouse of the decedent;

(b) an adult son or daughter of the decedent;

(c) either parent of the decedent;

(d) an adult brother or sister of the decedent;

(e) a grandparent of the decedent; and

(f) a guardian of the person of the decedent at the time of death.

(2) An anatomical gift may not be made by a person listed in subsection (1) if:

(a) a person in a prior class is available at the time of death to make an anatomical gift;

(b) the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(c) the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(3) An anatomical gift by a person authorized under subsection (1) must be made by:

(a) a document of gift signed by the person; or

(b) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(4) An anatomical gift by a person authorized under subsection (1) may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(5) A failure to make an anatomical gift under subsection (1) is not an objection to the making of an anatomical gift.

History: En. Sec. 11, Ch. 540, L. 1989.

72-17-215. Authorization by coroner or local public health official. (1) The coroner may release and permit the removal of a part from a body within that official's custody, for transplantation or therapy, if:

(a) the official has received a request for the part from a hospital, physician, surgeon, or procurement organization;

(b) the official has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent's medical records and inform persons listed in 72-17-214(1) of their option to make, or object to making, an anatomical gift;

(c) the official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in 72-17-214(1);

(d) the removal will be by a physician, surgeon, or technician; but in the case of eyes, by one of them or by an enucleator;

(e) the removal will not interfere with any autopsy or investigation;

(f) the removal will be in accordance with accepted standards; and

(g) cosmetic restoration will be done, if appropriate.

(2) If the body is not within the custody of the coroner, the local public health officer may release and permit the removal of any part from a body in the local public health officer's custody for transplantation or therapy if the requirements of subsection (1) are met.

(3) An official releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it was released.

History: En. Sec. 12, Ch. 540, L. 1989.

Cross-References

HIV antibody testing — testing of donors of organs, tissues, and semen required — penalty, 50-16-1008.

Part 3
Regulation — Qualifications

72-17-301. Rights and duties at death. (1) Rights of a donee created by an anatomical gift are superior to rights of others under 72-17-214(1), except with respect to autopsies. A donee may accept or reject an anatomical gift. If the donee accepts an anatomical gift of the entire body, the donee, subject to the terms of the gift, may allow embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(2) The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to 72-17-201(4).

(3) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes after determination of death by a physician or surgeon.

History: En. Sec. 7, Ch. 340, L. 1969; R.C.M. 1947, 69-2321(a), (b); MCA 1981, 72-17-210; redes. 72-17-301 by Code Commissioner, 1983; amd. Sec. 8, Ch. 540, L. 1989.

Cross-References

HIV antibody testing — testing of donors of organs, tissues, and semen required — penalty, 50-16-1008.

72-17-302. Sale or purchase of parts prohibited. (1) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

(2) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(3) A person who violates this section is guilty of a felony and upon conviction is subject to a fine not exceeding $50,000 or imprisonment not exceeding 5 years, or both.

History: En. Sec. 15, Ch. 540, L. 1989.

72-17-303 through 72-17-310 reserved.

72-17-311. Eye enucleations — enucleators — qualifications. (1) Eye enucleations for purposes of anatomical gifts may be performed:

(a) by a licensed physician or surgeon; or

(b) by an enucleator trained in eye enucleation.

(2) An acceptable course in eye enucleation must include the anatomy and physiology of the eye, instruction in maintaining a sterile field during the enucleation procedure, and use of appropriate instruments and sterile procedures for removal and preservation of corneal tissue.

(3) Certification of satisfactory completion of a course in eye enucleation must be provided by the ophthalmologist who teaches the course. This certification qualifies an enucleator to perform eye enucleations for a period of 3 years from the date of completion of the course.

History: En. Sec. 3, Ch. 403, L. 1983; amd. Sec. 137, Ch. 370, L. 1987; amd. Sec. 9, Ch. 540, L. 1989.

72-17-312. Approval of eye banks. Any bank or storage facility that furnishes to the department written evidence of its membership and certification and reports and recommendations for future compliance, granted by the eyebank association of America, is approved for receipt and storage of eye tissue for the term of such membership and certification and is eligible during such term to be a donee of eye tissue pursuant to 72-17-202.

History: En. Sec. 4, Ch. 403, L. 1983; amd. Sec. 10, Ch. 540, L. 1989.

CHAPTERS 18 AND 19

RESERVED

CHAPTER 20

TRUSTS IN GENERAL

(Repealed. Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-20-101. En. Sec. 2950, Civ. C. 1895; re-en. Sec. 5364, Rev. C. 1907; re-en. Sec. 7878, R.C.M. 1921; Cal. Civ. C. Sec. 2215; Field Civ. C. Sec. 1167; re-en. Sec. 7878, R.C.M. 1935; R.C.M. 1947, 86-201.

72-20-102. En. Sec. 2951, Civ. C. 1895; re-en. Sec. 5365, Rev. C. 1907; re-en. Sec. 7879, R.C.M. 1921; Cal. Civ. C. Sec. 2216; Field Civ. C. Sec. 1168; re-en. Sec. 7879, R.C.M. 1935; R.C.M. 1947, 86-202.

72-20-103. En. Sec. 2952, Civ. C. 1895; re-en. Sec. 5366, Rev. C. 1907; re-en. Sec. 7880, R.C.M. 1921; Cal. Civ. C. Sec. 2217; Field Civ. C. Sec. 1169; re-en. Sec. 7880, R.C.M. 1935; R.C.M. 1947, 86-203.

72-20-104. En. Sec. 2953, Civ. C. 1895; re-en. Sec. 5367, Rev. C. 1907; re-en. Sec. 7881, R.C.M. 1921; Cal. Civ. C. Sec. 2218; Field Civ. C. Sec. 1170; re-en. Sec. 7881, R.C.M. 1935; R.C.M. 1947, 86-204.

72-20-105. En. Sec. 2954, Civ. C. 1895; re-en. Sec. 5368, Rev. C. 1907; re-en. Sec. 7882, R.C.M. 1921; Cal. Civ. C. Sec. 2219; Field Civ. C. Sec. 1171; re-en. Sec. 7882, R.C.M. 1935; R.C.M. 1947, 86-205.

72-20-106. En. Sec. 2955, Civ. C. 1895; re-en. Sec. 5369, Rev. C. 1907; re-en. Sec. 7883, R.C.M. 1921; Cal. Civ. C. Sec. 2220; Field Civ. C. Sec. 1172; re-en. Sec. 7883, R.C.M. 1935; R.C.M. 1947, 86-206.

72-20-107. En. Sec. 2956, Civ. C. 1895; re-en. Sec. 5370, Rev. C. 1907; re-en. Sec. 7884, R.C.M. 1921; Cal. Civ. C. Sec. 2221; Field Civ. C. Sec. 1173; re-en. Sec. 7884, R.C.M. 1935; R.C.M. 1947, 86-207.

72-20-108. En. Sec. 2957, Civ. C. 1895; re-en. Sec. 5371, Rev. C. 1907; re-en. Sec. 7885, R.C.M. 1921; Cal. Civ. C. Sec. 2222; Field Civ. C. Sec. 1174; re-en. Sec. 7885, R.C.M. 1935; R.C.M. 1947, 86-208.

72-20-109. En. Sec. 1, Ch. 218, L. 1921; re-en. Sec. 7907, R.C.M. 1921; re-en. Sec. 7907, R.C.M. 1935; R.C.M. 1947, 86-406.

72-20-110. En. Sec. 2958, Civ. C. 1895; re-en. Sec. 5372, Rev. C. 1907; re-en. Sec. 7886, R.C.M. 1921; Cal. Civ. C. Sec. 2223; Field Civ. C. Sec. 1175; re-en. Sec. 7886, R.C.M. 1935; R.C.M. 1947, 86-209.

72-20-111. En. Sec. 2959, Civ. C. 1895; re-en. Sec. 5373, Rev. C. 1907; re-en. Sec. 7887, R.C.M 1921; Cal. Civ. C. Sec. 2224; Field Civ. C. Sec. 1176; re-en. Sec. 7887, R.C.M. 1935; R.C.M. 1947, 86-210.

72-20-201. En. Sec. 2970, Civ. C. 1895; re-en. Sec. 5374, Rev. C. 1907; re-en. Sec. 7888, R.C.M. 1921; Cal. Civ. C. Sec. 2228; Field Civ. C. Sec. 1177; re-en. Sec. 7888, R.C.M. 1935; R.C.M. 1947, 86-301.

72-20-202. En. Sec. 2973, Civ. C. 1895; re-en. Sec. 5377, Rev. C. 1907; re-en. Sec. 7891, R.C.M. 1921; Cal. Civ. C. Sec. 2231; Field Civ.

C. Sec. 1180; re-en. Sec. 7891, R.C.M. 1935; R.C.M. 1947, 86-304.

72-20-203. En. Secs. 2971, 2979, Civ. C. 1895; re-en. Secs. 5375, 5383, Rev. C. 1907; re-en. Secs. 7889, 7897, R.C.M. 1921; Cal. Civ. C. Secs. 2229, 2237; Field Civ. C. Secs. 1178, 1186; re-en. Secs. 7889, 7897, R.C.M. 1935; R.C.M. 1947, 86-302, 86-310.

72-20-204. En. Sec. 2972, Civ. C. 1895; re-en. Sec. 5376, Rev. C. 1907; re-en. Sec. 7890, R.C.M. 1921; Cal. Civ. C. Sec. 2230; Based on Field Civ. C. Sec. 1179; re-en. Sec. 7890, R.C.M. 1935; R.C.M. 1947, 86-303.

72-20-205. En. Sec. 2974, Civ. C. 1895; re-en. Sec. 5378, Rev. C. 1907; re-en. Sec. 7892, R.C.M. 1921; Cal. Civ. C. Sec. 2232; Field Civ. C. Sec. 1181; re-en. Sec. 7892, R.C.M. 1935; R.C.M. 1947, 86-305.

72-20-206. En. Sec. 2975, Civ. C. 1895; re-en. Sec. 5379, Rev. C. 1907; re-en. Sec. 7893, R.C.M. 1921; Cal. Civ. C. Sec. 2233; Field Civ. C. Sec. 1182; re-en. Sec. 7893, R.C.M. 1935; R.C.M. 1947, 86-306.

72-20-207. En. Sec. 2976, Civ. C. 1895; re-en. Sec. 5380, Rev. C. 1907; re-en. Sec. 7894, R.C.M. 1921; Cal. Civ. C. Sec. 2234; Field Civ. C. Sec. 1183; re-en. Sec. 7894, R.C.M. 1935; R.C.M. 1947, 86-307.

72-20-208. En. Sec. 2977, Civ. C. 1895; re-en. Sec. 5381, Rev. C. 1907; re-en. Sec. 7895, R.C.M. 1921; Cal. Civ. C. Sec. 2235; Field Civ. C. Sec. 1184; re-en. Sec. 7895, R.C.M. 1935; R.C.M. 1947, 86-308.

72-20-209. En. Sec. 2978, Civ. C. 1895; re-en. Sec. 5382, Rev. C. 1907; re-en. Sec. 7896, R.C.M. 1921; Cal. Civ. C. Sec. 2236; Field Civ. C. Sec. 1185; re-en. Sec. 7896, R.C.M. 1935; R.C.M. 1947, 86-309.

72-20-210. En. Sec. 2980, Civ. C. 1895; re-en. Sec. 5384, Rev. C. 1907; re-en. Sec. 7898, R.C.M. 1921; Cal. Civ. C. Sec. 2238; Field Civ. C. Sec. 1187; re-en. Sec. 7898, R.C.M. 1935; R.C.M. 1947, 86-311.

72-20-211. En. Sec. 2981, Civ. C. 1895; re-en. Sec. 5385, Rev. C. 1907; re-en. Sec. 7899, R.C.M. 1921; Cal. Civ. C. Sec. 2239; Field Civ. C. Sec. 1188; re-en. Sec. 7899, R.C.M. 1935; R.C.M. 1947, 86-312.

72-20-301. En. Sec. 2990, Civ. C. 1895; re-en. Sec. 5386, Rev. C. 1907; re-en. Sec. 7900, R.C.M. 1921; Cal. Civ. C. Sec. 2243; Field Civ. C. Sec. 1189; re-en. Sec. 7900, R.C.M. 1935; R.C.M. 1947, 86-313.

72-20-302. En. Sec. 2991, Civ. C. 1895; re-en. Sec. 5387, Rev. C. 1907; re-en. Sec. 7901, R.C.M. 1921; Cal. Civ. C. Sec. 2244; Field Civ. C. Sec. 1190; re-en. Sec. 7901, R.C.M. 1935; R.C.M. 1947, 86-314.

72-20-401. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-402. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-403. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-404. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-405. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-406. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-407. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part); amd. Sec. 12, Ch. 2, L. 1983.

72-20-408. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-409. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part); amd. Sec. 30, Ch. 6, L. 1979.

72-20-501. En. Sec. 1530, Civ. C. 1895; re-en. Sec. 4630, Rev. C. 1907; re-en. Sec. 6877, R.C.M. 1921; Cal. Civ. C. Sec. 1135; Based on Field Civ. C. Sec. 495; re-en. Sec. 6877, R.C.M. 1935; R.C.M. 1947, 67-1701.

CHAPTER 21

TRUSTEES' POWERS ACT
(Repealed. Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-21-101. En. 86-910 by Sec. 9, Ch. 297, L. 1974; R.C.M. 1947, 86-910.

72-21-102. En. 86-908 by Sec. 7, Ch. 297, L. 1974; R.C.M. 1947, 86-908.

72-21-103. En. 86-909 by Sec. 8, Ch. 297, L. 1974; R.C.M. 1947, 86-909.

72-21-104. En. 86-902 by Sec. 1, Ch. 297, L. 1974; R.C.M. 1947, 86-902.

72-21-201. En. 86-903 by Sec. 2, Ch. 297, L. 1974; R.C.M. 1947, 86-903.

72-21-202. En. 86-904 by Sec. 3, Ch. 297, L. 1974; R.C.M. 1947, 86-904(1), (3); amd. Sec. 1, Ch. 93, L. 1981; amd. Sec. 2, Ch. 145, L. 1989.

72-21-203. En. 86-904 by Sec. 3, Ch. 297, L. 1974; R.C.M. 1947, 86-904(2).

72-21-204. En. 86-906 by Sec. 5, Ch. 297, L. 1974; R.C.M. 1947, 86-906.

72-21-205. En. 86-905 by Sec. 4, Ch. 297, L. 1974; amd. Sec. 9, Ch. 401, L. 1975; R.C.M. 1947, 86-905.

72-21-206. En. 86-907 by Sec. 6, Ch. 297, L. 1974; R.C.M. 1947, 86-907.

CHAPTER 22

CONVEYANCE OF TRUST PROPERTY BY COURT ORDER

(Repealed. Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-22-101. En. Sec. 1, Ch. 265, L. 1947; R.C.M. 1947, 86-315(part).

72-22-102. En. Sec. 1, Ch. 265, L. 1947; R.C.M. 1947, 86-315(part).

72-22-103. En. Sec. 2, Ch. 265, L. 1947; R.C.M. 1947, 86-316.

72-22-104. En. Sec. 3, Ch. 265, L. 1947; R.C.M. 1947, 86-317.

72-22-105. En. Sec. 12, Ch. 265, L. 1947; R.C.M. 1947, 86-326.

72-22-201. En. Sec. 5, Ch. 265, L. 1947; R.C.M. 1947, 86-319.

72-22-202. En. Sec. 4, Ch. 265, L. 1947; R.C.M. 1947, 86-318(part).

72-22-203. En. Sec. 4, Ch. 265, L. 1947; R.C.M. 1947, 86-318(part).

72-22-204. En. Sec. 6, Ch. 265, L. 1947; R.C.M. 1947, 86-320.

72-22-205. En. Sec. 7, Ch. 265, L. 1947; R.C.M. 1947, 86-321.

72-22-206. En. Sec. 8, Ch. 265, L. 1947; R.C.M. 1947, 86-322.

72-22-207. En. Sec. 9, Ch. 265, L. 1947; R.C.M. 1947, 86-323(part).

72-22-208. En. Sec. 9, Ch. 265, L. 1947; R.C.M. 1947, 86-323(part).

72-22-209. En. Sec. 11, Ch. 265, L. 1947; R.C.M. 1947, 86-325.

72-22-210. En. Sec. 10, Ch. 265, L. 1947; R.C.M. 1947, 86-324.

CHAPTER 23

TRUSTS FOR BENEFIT OF THIRD PERSONS

(Repealed. Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-23-101. En. Sec. 3000, Civ. C. 1895; re-en. Sec. 5388, Rev. C. 1907; re-en. Sec. 7902, R.C.M. 1921; Cal. Civ. C. Sec. 2250; Field Civ. C. Sec. 1191; re-en. Sec. 7902, R.C.M. 1935; R.C.M. 1947, 86-401.

72-23-201. En. Sec. 3001, Civ. C. 1895; re-en. Sec. 5389, Rev. C. 1907; re-en. Sec. 7903, R.C.M. 1921; Cal. Civ. C. Sec. 2251; Field Civ. C. Sec. 1192; re-en. Sec. 7903, R.C.M. 1935; R.C.M. 1947, 86-402.

72-23-202. En. Sec. 3002, Civ. C. 1895; re-en. Sec. 5390, Rev. C. 1907; re-en. Sec. 7904, R.C.M. 1921; Cal. Civ. C. Sec. 2252; Field Civ. C. Sec. 1193; re-en. Sec. 7904, R.C.M. 1935; R.C.M. 1947, 86-403.

72-23-203. En. Sec. 3003, Civ. C. 1895; re-en. Sec. 5391, Rev. C. 1907; re-en. Sec. 7905, R.C.M. 1921; Cal. Civ. C. Sec. 2253; Field Civ. C. Sec. 1194; re-en. Sec. 7905, R.C.M. 1935; R.C.M. 1947, 86-404.

72-23-204. En. Sec. 3004, Civ. C. 1895; re-en. Sec. 5392, Rev. C. 1907; re-en. Sec. 7906, R.C.M. 1921; Cal. Civ. C. Sec. 2254; Field Civ. C. Sec. 1195; re-en. Sec. 7906, R.C.M. 1935; R.C.M. 1947, 86-405.

72-23-301. En. Sec. 3010, Civ. C. 1895; re-en. Sec. 5393, Rev. C. 1907; re-en. Sec. 7908, R.C.M. 1921; Cal. Civ. C. Sec. 2258; Field Civ. C. Sec. 1196; re-en. Sec. 7908, R.C.M. 1935; R.C.M. 1947, 86-501.

72-23-302. En. Sec. 3011, Civ. C. 1895; re-en. Sec. 5394, Rev. C. 1907; re-en. Sec. 7909, R.C.M. 1921; Cal. Civ. C. Sec. 2259; Field Civ. C. Sec. 1197; re-en. Sec. 7909, R.C.M. 1935; R.C.M. 1947, 86-502.

72-23-303. En. Sec. 3013, Civ. C. 1895; re-en. Sec. 5396, Rev. C. 1907; re-en. Sec. 7911, R.C.M. 1921; Cal. Civ. C. Sec. 2261; Field Civ. C. Sec. 1199; re-en. Sec. 7911, R.C.M. 1935; R.C.M. 1947, 86-504.

72-23-304. En. Sec. 3014, Civ. C. 1895; re-en. Sec. 5397, Rev. C. 1907; re-en. Sec. 7912, R.C.M. 1921; Cal. Civ. C. Sec. 2262; Field Civ. C. Sec. 1200; re-en. Sec. 7912, R.C.M. 1935; R.C.M. 1947, 86-505.

72-23-305. En. Sec. 3015, Civ. C. 1895; re-en. Sec. 5398, Rev. C. 1907; re-en. Sec. 7913, R.C.M. 1921; Cal. Civ. C. Sec. 2263; Field Civ. C. Sec. 1201; re-en. Sec. 7913, R.C.M. 1935; R.C.M. 1947, 86-506.

72-23-306. En. Sec. 3022, Civ. C. 1895; re-en. Sec. 5401, Rev. C. 1907; re-en. Sec. 7916, R.C.M. 1921; Cal. Civ. C. Sec. 2269; Field Civ.

C. Sec. 1204; re-en. Sec. 7916, R.C.M. 1935; R.C.M. 1947, 86-509.

72-23-307. En. Sec. 3020, Civ. C. 1895; re-en. Sec. 5399, Rev. C. 1907; re-en. Sec. 7914, R.C.M. 1921; Cal. Civ. C. Sec. 2267; Field Civ. C. Sec. 1202; re-en. Sec. 7914, R.C.M. 1935; R.C.M. 1947, 86-507.

72-23-308. En. Sec. 3021, Civ. C. 1895; re-en. Sec. 5400, Rev. C. 1907; re-en. Sec. 7915, R.C.M. 1921; Cal. Civ. C. Sec. 2268; Field Civ. C. Sec. 1203; re-en. Sec. 7915, R.C.M. 1935; R.C.M. 1947, 86-508.

72-23-401. En. Sec. 3030, Civ. C. 1895; re-en. Sec. 5402, Rev. C. 1907; re-en. Sec. 7917, R.C.M. 1921; Cal. Civ. C. Sec. 2273; Field Civ. C. Sec. 1205; re-en. Sec. 7917, R.C.M. 1935; R.C.M. 1947, 86-510.

72-23-402. En. Sec. 3031, Civ. C. 1895; re-en. Sec. 5403, Rev. C. 1907; amd. Sec. 7918, R.C.M. 1921; Cal. Civ. C. Sec. 2274; Field Civ. C. Sec. 1206; re-en. Sec. 7918, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1965; R.C.M. 1947, 86-511.

72-23-403. En. Sec. 3032, Civ. C. 1895; re-en. Sec. 5404, Rev. C. 1907; re-en. Sec. 7919, R.C.M. 1921; Cal. Civ. C. Sec. 2275; Field Civ. C. Sec. 1207; re-en. Sec. 7919, R.C.M. 1935; R.C.M. 1947, 86-512.

72-23-501. En. Sec. 3040, Civ. C. 1895; re-en. Sec. 5405, Rev. C. 1907; re-en. Sec. 7920, R.C.M. 1921; Cal. Civ. C. Sec. 2279; Field Civ. C. Sec. 1208; re-en. Sec. 7920, R.C.M. 1935; R.C.M. 1947, 86-601.

72-23-502. En. Sec. 3041, Civ. C. 1895; re-en. Sec. 5406, Rev. C. 1907; re-en. Sec. 7921, R.C.M. 1921; Cal. Civ. C. Sec. 2280; Field Civ. C. Sec. 1209; re-en. Sec. 7921, R.C.M. 1935; R.C.M. 1947, 86-602.

72-23-503. En. Sec. 3042, Civ. C. 1895; re-en. Sec. 5407, Rev. C. 1907; re-en. Sec. 7922, R.C.M. 1921; Cal. Civ. C. Sec. 2281; Field Civ. C. Sec. 1210; re-en. Sec. 7922, R.C.M. 1935; R.C.M. 1947, 86-603.

72-23-504. En. Sec. 3043, Civ. C. 1895; re-en. Sec. 5408, Rev. C. 1907; re-en. Sec. 7923, R.C.M. 1921; Cal. Civ. C. Sec. 2282; Field Civ. C. Sec. 1211; re-en. Sec. 7923, R.C.M. 1935; R.C.M. 1947, 86-604.

72-23-505. En. Sec. 3012, Civ. C. 1895; re-en. Sec. 5395, Rev. C. 1907; re-en. Sec. 7910, R.C.M. 1921; Cal. Civ. C. Sec. 2260; Field Civ. C. Sec. 1198; re-en. Sec. 7910, R.C.M. 1935; R.C.M. 1947, 86-503.

72-23-506. En. Sec. 3044, Civ. C. 1895; re-en. Sec. 5409, Rev. C. 1907; re-en. Sec. 7924, R.C.M. 1921; Cal. Civ. C. Sec. 2283; Based on Field Civ. C. Sec. 1212; re-en. Sec. 7924, R.C.M. 1935; R.C.M. 1947, 86-605.

72-23-507. En. Sec. 3050, Civ. C. 1895; re-en. Sec. 5410, Rev. C. 1907; re-en. Sec. 7925, R.C.M. 1921; Cal. Civ. C. Sec. 2287; Based on Field Civ. C. Sec. 1213; re-en. Sec. 7925, R.C.M. 1935; R.C.M. 1947, 86-606.

72-23-508. En. Sec. 3052, Civ. C. 1895; re-en. Sec. 5412, Rev. C. 1907; re-en. Sec. 7927, R.C.M. 1921; Cal. Civ. C. Sec. 2289; Based on Field Civ. C. Sec. 1215; re-en. Sec. 7927, R.C.M. 1935; R.C.M. 1947, 86-608.

CHAPTER 24

TRUSTS IN RELATION TO REAL PROPERTY
(Repealed. Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-24-101. En. Sec. 1310, Civ. C. 1895; re-en. Sec. 4536, Rev. C. 1907; re-en. Sec. 6783, R.C.M. 1921; Cal. Civ. C. Sec. 847; re-en. Sec. 6783, R.C.M. 1935; R.C.M. 1947, 86-101.

72-24-102. En. Sec. 1311, Civ. C. 1895; re-en. Sec. 4537, Rev. C. 1907; re-en. Sec. 6784, R.C.M. 1921; Cal. Civ. C. Sec. 852; Field Civ. C. Sec. 280; re-en. Sec. 6784, R.C.M. 1935; R.C.M. 1947, 86-102.

72-24-103. En. Sec. 1314, Civ. C. 1895; re-en. Sec. 4540, Rev. C. 1907; re-en. Sec. 6787, R.C.M. 1921; Cal. Civ. C. Sec. 857; Based on Field Civ. C. Sec. 285; re-en. Sec. 6787, R.C.M. 1935; R.C.M. 1947, 86-105; amd. Sec. 31, Ch. 6, L. 1979.

72-24-104. En. Sec. 1312, Civ. C. 1895; re-en. Sec. 4538, Rev. C. 1907; re-en. Sec. 6785, R.C.M. 1921; Cal. Civ. C. Sec. 853; Field Civ. C. Sec. 281; re-en. Sec. 6785, R.C.M. 1935; R.C.M. 1947, 86-103.

72-24-201. En. Sec. 1317, Civ. C. 1895; re-en. Sec. 4543, Rev. C. 1907; re-en. Sec. 6790, R.C.M. 1921; Cal. Civ. C. Sec. 863; Field Civ. C. Sec. 291; re-en. Sec. 6790, R.C.M. 1935; R.C.M. 1947, 86-108.

72-24-202. En. Sec. 1318, Civ. C. 1895; re-en. Sec. 4544, Rev. C. 1907; re-en. Sec. 6791, R.C.M. 1921; Cal. Civ. C. Sec. 864; Field Civ. C. Sec. 292; re-en. Sec. 6791, R.C.M. 1935; R.C.M. 1947, 86-109.

72-24-203. En. Sec. 1319, Civ. C. 1895; re-en. Sec. 4545, Rev. C. 1907; re-en. Sec. 6792, R.C.M. 1921; Cal. Civ. C. Sec. 865; Field Civ. C. Sec. 293; re-en. Sec. 6792, R.C.M. 1935; R.C.M. 1947, 86-110.

72-24-204. En. Sec. 1320, Civ. C. 1895; re-en. Sec. 4546, Rev. C. 1907; re-en. Sec. 6793, R.C.M. 1921; Cal. Civ. C. Sec. 866; Field Civ. C. Sec. 294; re-en. Sec. 6793, R.C.M. 1935; R.C.M. 1947, 86-111.

72-24-205. En. Sec. 1321, Civ. C. 1895; re-en. Sec. 4547, Rev. C. 1907; re-en. Sec. 6794, R.C.M. 1921; Cal. Civ. C. Sec. 867; Based on Field Civ. C. Secs. 295 and 296; re-en. Sec. 6794, R.C.M. 1935; R.C.M. 1947, 86-112.

72-24-206. En. Sec. 1323, Civ. C. 1895; re-en. Sec. 4549, Rev. C. 1907; re-en. Sec. 6796, R.C.M. 1921; Cal. Civ. C. Sec. 870; Field Civ. C. Sec. 298; re-en. Sec. 6796, R.C.M. 1935; R.C.M. 1947, 86-114.

72-24-207. En. Sec. 1316, Civ. C. 1895; re-en. Sec. 4542, Rev. C. 1907; re-en. Sec. 6789, R.C.M. 1921; Cal. Civ. C. Sec. 860; Field Civ. C. Sec. 323; re-en. Sec. 6789, R.C.M. 1935; R.C.M. 1947, 86-107.

72-24-208. En. Sec. 1313, Civ. C. 1895; re-en. Sec. 4539, Rev. C. 1907; re-en. Sec. 6786, R.C.M. 1921; Cal. Civ. C. Sec. 856; Field Civ. C. Sec. 284; re-en. Sec. 6786, R.C.M. 1935; R.C.M. 1947, 86-104.

72-24-209. En. Sec. 1322, Civ. C. 1895; re-en. Sec. 4548, Rev. C. 1907; re-en. Sec. 6795, R.C.M. 1921; Cal. Civ. C. Sec. 869; Based on Field Civ. C. Sec. 297; re-en. Sec. 6795, R.C.M. 1935; R.C.M. 1947, 86-113.

72-24-210. En. Sec. 1315, Civ. C. 1895; re-en. Sec. 4541, Rev. C. 1907; re-en. Sec. 6788, R.C.M. 1921; Cal. Civ. C. Sec. 859; Field Civ. C. Sec. 287; re-en. Sec. 6788, R.C.M. 1935; R.C.M. 1947, 86-106.

72-24-211. En. Sec. 1324, Civ. C. 1895; re-en. Sec. 4550, Rev. C. 1907; re-en. Sec. 6797, R.C.M. 1921; Cal. Civ. C. Sec. 871; Field Civ. C. Sec. 299; re-en. Sec. 6797, R.C.M. 1935; R.C.M. 1947, 86-115.

CHAPTER 25

REVISED UNIFORM PRINCIPAL AND INCOME ACT

(Repealed. Sec. 16, Ch. 371, L. 1983; Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-25-101. En. Sec. 15, Ch. 277, L. 1959; R.C.M. 1947, 67-1915; amd. Sec. 1, Ch. 371, L. 1983.

72-25-102. En. Sec. 1, Ch. 277, L. 1959; R.C.M. 1947, 67-1901; amd. Sec. 2, Ch. 371, L. 1983.

72-25-103. En. Sec. 17, Ch. 277, L. 1959; R.C.M. 1947, 67-1916(part); amd. Sec. 3, Ch. 371, L. 1983.

72-25-104. En. Sec. 2, Ch. 277, L. 1959; R.C.M. 1947, 67-1902.

72-25-105. En. Sec. 14, Ch. 277, L. 1959; R.C.M. 1947, 67-1914; amd. Sec. 4, Ch. 371, L. 1983.

72-25-201. En. Sec. 3, Ch. 277, L. 1959; R.C.M. 1947, 67-1903.

72-25-202. En. Sec. 4, Ch. 277, L. 1959; R.C.M. 1947, 67-1904.

72-25-203. En. Sec. 5, Ch. 277, L. 1959; R.C.M. 1947, 67-1905.

72-25-204. En. Sec. 6, Ch. 277, L. 1959; R.C.M. 1947, 67-1906.

72-25-205. En. Sec. 7, Ch. 277, L. 1959; R.C.M. 1947, 67-1907.

72-25-206. En. Sec. 8, Ch. 277, L. 1959; R.C.M. 1947, 67-1908.

72-25-207. En. Sec. 9, Ch. 277, L. 1959; R.C.M. 1947, 67-1909.

72-25-208. En. Sec. 10, Ch. 277, L. 1959; R.C.M. 1947, 67-1910.

72-25-209. En. Sec. 11, Ch. 277, L. 1959; R.C.M. 1947, 67-1911.

72-25-301. En. Sec. 12, Ch. 277, L. 1959; amd. Sec. 1, Ch. 134, L. 1965; R.C.M. 1947, 67-1912.

72-25-302. En. Sec. 13, Ch. 277, L. 1959; R.C.M. 1947, 67-1913.

72-25-401. En. Sec. 5, Ch. 371, L. 1983.

72-25-402. En. Sec. 6, Ch. 371, L. 1983.

72-25-403. En. Sec. 7, Ch. 371, L. 1983.

72-25-404. En. Sec. 8, Ch. 371, L. 1983.

72-25-405. En. Sec. 9, Ch. 371, L. 1983.

72-25-406. En. Sec. 10, Ch. 371, L. 1983.

72-25-407. En. Sec. 11, Ch. 371, L. 1983.

72-25-408. En. Sec. 12, Ch. 371, L. 1983.

72-25-409. En. Sec. 13, Ch. 371, L. 1983.

72-25-410. En. Sec. 14, Ch. 371, L. 1983.

72-25-411. En. Sec. 15, Ch. 371, L. 1983.

CHAPTER 26

UNIFORM TRANSFERS TO MINORS ACT

Part 1 — Uniform Gifts to Minors Act General Provisions

(Repealed. Sec. 25, Ch. 102, L. 1985)

Part 2 — Uniform Gifts to Minors Act Making and Effect of Gift

(Repealed. Sec. 25, Ch. 102, L. 1985)

Part 3 — Uniform Gifts to Minors Act Gift Administration — Custodian

(Repealed. Sec. 25, Ch. 102, L. 1985)

Part 4 — Uniform Gifts to Minors Act Resignation, Death, or Removal of Custodian — Bonding — Successor

(Repealed. Sec. 25, Ch. 102, L. 1985)

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72-26-703. Use of custodial property.
72-26-704. Custodian's expenses, compensation, and bond.
72-26-705. Exemption of third person from liability.
72-26-706. Liability to third persons.

Part 8 — Renunciation, Resignation, Death, or Removal of Custodian — Accounting — Termination — Successor

72-26-801. Renunciation, resignation, death, or removal of custodian — designation of successor custodian.
72-26-802. Accounting by and determination of liability of custodian.
72-26-803. Termination of custodianship.

Part 1

Uniform Gifts to Minors Act General Provisions (Repealed. Sec. 25, Ch. 102, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

72-26-101. En. Sec. 10, Ch. 245, L. 1957; amd. Sec. 7, Ch. 234, L. 1967; R.C.M. 1947, 67-1810.

72-26-102. En. Sec. 1, Ch. 245, L. 1957; amd. Sec. 1, Ch. 234, L. 1967; amd. Sec. 11, Ch. 423, L. 1971; R.C.M. 1947, 67-1801.

72-26-103. En. Sec. 9, Ch. 245, L. 1957; R.C.M. 1947, 67-1809.

72-26-104. En. Sec. 12, Ch. 245, L. 1957; amd. Sec. 8, Ch. 234, L. 1967; R.C.M. 1947, 67-1811.

Part 2

Uniform Gifts to Minors Act Making and Effect of Gift (Repealed. Sec. 25, Ch. 102, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

72-26-201. En. Sec. 2, Ch. 245, L. 1957; amd. Sec. 2, Ch. 234, L. 1967; R.C.M. 1947, 67-1802; amd. Sec. 32, Ch. 6, L. 1979; amd. Sec. 1, Ch. 8, L. 1981.

72-26-202. En. Sec. 3, Ch. 245, L. 1957; amd. Sec. 3, Ch. 234, L. 1967; R.C.M. 1947, 67-1803.

Part 3

Uniform Gifts to Minors Act Gift Administration — Custodian (Repealed. Sec. 25, Ch. 102, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

72-26-301. En. Sec. 5, Ch. 245, L. 1957; R.C.M. 1947, 67-1805(d).

72-26-302. En. Sec. 4, Ch. 245, L. 1957; amd. Sec. 4, Ch. 234, L. 1967; amd. Sec. 12, Ch. 423, L. 1971; R.C.M. 1947, 67-1804.

72-26-303. En. Sec. 6, Ch. 245, L. 1957; amd. Sec. 5, Ch. 234, L. 1967; R.C.M. 1947, 67-1806.

72-26-304. En. Sec. 5, Ch. 245, L. 1957; R.C.M. 1947, 67-1805(a) thru (c).

72-26-305. En. Sec. 5, Ch. 245, L. 1957; R.C.M. 1947, 67-1805(e).

72-26-306. En. Sec. 8, Ch. 245, L. 1957; R.C.M. 1947, 67-1808.

Part 4

Uniform Gifts to Minors Act Resignation, Death, or Removal of Custodian — Bonding — Successor (Repealed. Sec. 25, Ch. 102, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

72-26-401. En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(part).

72-26-402. En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(part); amd. Sec. 33, Ch. 6, L. 1979.

72-26-403. En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(part).

72-26-404. En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(e), (f).

Part 5

General Provisions

72-26-501. Short title. This chapter may be cited as the "Montana Uniform Transfers to Minors Act".

History: En. Sec. 1, Ch. 102, L. 1985.

72-26-502. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who has attained the age of 21 years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means district court.

(6) "Custodial property" means:

(a) any interest in property transferred to a custodian under this chapter; and

(b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under 72-26-603 or a successor or substitute custodian designated under 72-26-801.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of 21 years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under 72-26-603.

(16) "Transferor" means a person who makes a transfer under this chapter.

(17) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

History: En. Sec. 3, Ch. 102, L. 1985; amd. Sec. 29, Ch. 582, L. 1989.

72-26-503. Scope and jurisdiction. (1) This chapter applies to a transfer that refers to this chapter in the designation under 72-26-603(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

History: En. Sec. 4, Ch. 102, L. 1985.

72-26-504. Applicability. This chapter applies to a transfer within the scope of 72-26-503 made after October 1, 1985, if:

(1) the transfer purports to have been made under the provisions of Title 72, chapter 26, parts 1 through 4 (repealed by section 25, Chapter 102, Laws of 1985);

(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this chapter is necessary to validate the transfer.

History: En. Sec. 23, Ch. 102, L. 1985.

72-26-505. Effect on existing custodianships. (1) Any transfer of custodial property as now defined in this chapter made before October 1, 1985, is validated notwithstanding that there was no specific authority in Title 72, chapter 26, parts 1 through 4 (repealed by section 25, Chapter 102, Laws of 1985), for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This chapter applies to all transfers made before October 1, 1985, in a manner and form prescribed in Title 72, chapter 26, parts 1 through 4 (repealed by section 25, Chapter 102, Laws of 1985), except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on October 1, 1985.

(3) Sections 72-26-502 and 72-26-803, with respect to the age of a minor for whom custodial property is held under this chapter, do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 before October 1, 1985.

History: En. Sec. 24, Ch. 102, L. 1985.

72-26-506. Uniformity of application and construction. This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

History: **En. Sec. 2, Ch. 102, L. 1985.**

Part 6

Manner of Creating Custodial Property and Effecting Transfer

72-26-601. Nomination of custodian. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act". The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights that is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under 72-26-603(1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under 72-26-603. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to 72-26-603.

History: **En. Sec. 5, Ch. 102, L. 1985.**

72-26-602. Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

History: **En. Sec. 12, Ch. 102, L. 1985.**

72-26-603. Manner of creating custodial property and effecting transfer — designation of initial custodian — control. (1) Custodial property is created and a transfer is made whenever:

(a) an uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2);

(b) money is paid or delivered or a security held in the name of a broker, financial institution, or its nominee is transferred to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act";

(c) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act";

(d) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act";

(e) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act";

(f) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(g) an interest in any property not described in subsections (1)(a) through (1)(f) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2).

(2) An instrument in the following form satisfies the requirements of subsections (1)(a)(ii) and (1)(g):

"TRANSFER UNDER THE MONTANA
UNIFORM TRANSFERS TO MINORS ACT

I, ... (name of transferor or name and representative capacity if a fiduciary), hereby transfer to .... (name of custodian), as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: . . . .

. . . .

(Signature)

.... (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Montana Uniform Transfers to Minors Act.

Dated: . . . .

. . . .

(Signature of Custodian)"

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

History: En. Sec. 11, Ch. 102, L. 1985; amd. Sec. 1, Ch. 86, L. 1987.

72-26-604. Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to or the irrevocable exercise of a power of appointment in favor of a custodian for the benefit of a minor pursuant to 72-26-603.

History: En. Sec. 6, Ch. 102, L. 1985.

72-26-605. Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer pursuant to 72-26-603 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under 72-26-601 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under 72-26-601 or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under 72-26-603(1).

History: En. Sec. 7, Ch. 102, L. 1985.

72-26-606. Other transfer by fiduciary. (1) Subject to subsection (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to 72-26-603, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to subsection (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to 72-26-603.

(3) A transfer under subsection (1) or (2) may be made only if:

(a) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor;

(b) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and

(c) the transfer is authorized by the court if it exceeds $10,000 in value.

History: En. Sec. 8, Ch. 102, L. 1985.

Cross-References

Subsidiary trust companies, Title 32, ch. 1, part 8.

72-26-607. Transfer by obligor. (1) Subject to subsections (2) and (3), a person not subject to 72-26-605 or 72-26-606 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to 72-26-603.

(2) If a person having the right to do so under 72-26-601 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under 72-26-601 or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $10,000 in value.

History: **En. Sec. 9, Ch. 102, L. 1985.**

72-26-608. Receipt for custodial property. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this chapter.

History: **En. Sec. 10, Ch. 102, L. 1985.**

72-26-609. Validity and effect of transfer. (1) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(a) failure of the transferor to comply with 72-26-603(3) concerning possession and control;

(b) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under 72-26-603(1); or

(c) death or incapacity of a person nominated under 72-26-601 or designated under 72-26-603 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to 72-26-603 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter.

History: **En. Sec. 13, Ch. 102, L. 1985.**

Part 7

Administration by Custodian — Liability

72-26-701. Powers of custodian. (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(2) This section does not relieve a custodian from liability for breach of 72-26-702.

History: En. Sec. 15, Ch. 102, L. 1985.

72-26-702. Care of custodial property. (1) A custodian shall:

(a) take control of custodial property;

(b) register or record title to custodial property if appropriate; and

(c) collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on:

(a) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or

(b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian, in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered or held in an account designated in the name of the custodian, followed in substance by the words: "as a custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act".

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

History: En. Sec. 14, Ch. 102, L. 1985.

72-26-703. Use of custodial property. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(a) the duty or ability of the custodian personally or of any other person to support the minor; or

(b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

History: En. Sec. 16, Ch. 102, L. 1985.

72-26-704. Custodian's expenses, compensation, and bond. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under 72-26-604, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in 72-26-801(6), a custodian need not give a bond.

History: En. Sec. 17, Ch. 102, L. 1985.

72-26-705. Exemption of third person from liability. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) the validity of the purported custodian's designation;

(2) the propriety of or the authority under this chapter for any act of the purported custodian;

(3) the validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) the propriety of the application of any property of the minor delivered to the purported custodian.

History: En. Sec. 18, Ch. 102, L. 1985.

72-26-706. Liability to third persons. (1) A claim may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor when it is based on:

(a) a contract entered into by a custodian acting in a custodial capacity;

(b) an obligation arising from the ownership or control of custodial property; or

(c) a tort committed during the custodianship.

(2) A custodian is not personally liable:

(a) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(b) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

History: En. Sec. 19, Ch. 102, L. 1985.

Part 8

Renunciation, Resignation, Death, or Removal of Custodian — Accounting — Termination — Successor

72-26-801. Renunciation, resignation, death, or removal of custodian — designation of successor custodian. (1) A person nominated under 72-26-601 or designated under 72-26-603 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under 72-26-601, the person who made the nomination may nominate a substitute custodian under 72-26-601; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under 72-26-603(1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under 72-26-604 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subsection (2), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) or resigns under subsection (3) or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of 14 years may

petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under 72-26-604 or to require the custodian to give appropriate bond.

History: En. Sec. 20, Ch. 102, L. 1985.

72-26-802. Accounting by and determination of liability of custodian. (1) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court:

(a) for an accounting by the custodian or the custodian's legal representative; or

(b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under 72-26-706 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under 72-26-801(6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

History: En. Sec. 21, Ch. 102, L. 1985.

72-26-803. Termination of custodianship. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) the minor's attainment of 21 years of age with respect to custodial property transferred under 72-26-604 or 72-26-605;

(2) the minor's attainment of 18 years of age with respect to custodial property transferred under 72-26-606 or 72-26-607; or

(3) the minor's death.

History: En. Sec. 22, Ch. 102, L. 1985.

CHAPTER 27

MISCELLANEOUS PROVISIONS RELATING TO TRUSTS

(Repealed and Renumbered.
Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Sections Repealed and Renumbered:

72-27-101. Repealed. Sec. 220, Ch. 685, L. 1989.

72-27-102. Repealed. Sec. 220, Ch. 685, L. 1989.

72-27-201. Renumbered 72-37-101 by Code Commissioner, 1989.

72-27-202. Renumbered 72-37-102 by Code Commissioner, 1989.

72-27-203. Renumbered 72-37-103 by Code Commissioner, 1989.

72-27-204. Renumbered 72-37-104 by Code Commissioner, 1989.

Histories of Repealed Sections:

72-27-101. En. 86-707 by Sec. 1, Ch. 332, L. 1974; R.C.M. 1947, 86-707(1).

72-27-102. En. 86-707 by Sec. 1, Ch. 332, L. 1974; R.C.M. 1947, 86-707(2).

CHAPTERS 28 AND 29

RESERVED

CHAPTER 30

MANAGEMENT OF INSTITUTIONAL FUNDS

Part 1 — General Provisions

72-30-101. Short title.
72-30-102. Definitions.
72-30-103. Uniformity of construction.

Part 2 — Management of Funds

72-30-201. Endowment funds subject to appropriation and expenditure — net appreciation.
72-30-202. Determination of historic dollar value by institution conclusive.
72-30-203. Donor's intention restricting expenditure of net appreciation.
72-30-204. Allowable investments — retention of property.
72-30-205. Delegation of investment authority — advisory service.
72-30-206. Standard of care in management.
72-30-207. Release of restrictions in gift instrument.

Part 1

General Provisions

72-30-101. Short title. This chapter may be cited as the "Uniform Management of Institutional Funds Act".

History: En. Sec. 10, Ch. 389, L. 1973; R.C.M. 1947, 86-809.

72-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Endowment fund" means an institutional fund or any part thereof not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(2) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

(3) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(4) "Historic dollar value" means the aggregate fair value in dollars of:

(a) an endowment fund at the time it became an endowment fund;

(b) each subsequent donation to the fund at the time it is made; and

(c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

(5) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or

other eleemosynary purposes or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(6) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes but does not include:

(a) a fund held for an institution by a trustee that is not an institution; or

(b) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

History: En. Sec. 1, Ch. 389, L. 1973; R.C.M. 1947, 86-801(part).

72-30-103. Uniformity of construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. Sec. 9, Ch. 389, L. 1973; R.C.M. 1947, 86-808.

Part 2
Management of Funds

72-30-201. Endowment funds subject to appropriation and expenditure — net appreciation. (1) The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by 72-30-206.

(2) This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

History: En. Sec. 2, Ch. 389, L. 1973; R.C.M. 1947, 86-802.

72-30-202. Determination of historic dollar value by institution conclusive. The determination of historic dollar value made in good faith by the institution is conclusive.

History: En. Sec. 1, Ch. 389, L. 1973; R.C.M. 1947, 86-801(part).

72-30-203. Donor's intention restricting expenditure of net appreciation. (1) Section 72-30-201 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended.

(2) A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment or from a direction or authorization in the applicable gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits" or "to preserve the principal intact" or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after July 1, 1973.

History: En. Sec. 3, Ch. 389, L. 1973; R.C.M. 1947, 86-803.

72-30-204. Allowable investments — retention of property. In addition to an investment otherwise authorized by law or by the applicable gift instrument and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investment by a fiduciary, may:

(1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations; shares in or obligations of associations, partnerships, or individuals; and obligations of any government or subdivision or instrumentality thereof;

(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) include all or part of any institutional fund in any pooled or common fund maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

History: En. Sec. 4, Ch. 389, L. 1973; R.C.M. 1947, 86-804; amd. Sec. 34, Ch. 6, L. 1979.

72-30-205. Delegation of investment authority — advisory service. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

(1) delegate to its committees, officers, or employees of the institution or the fund or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

(2) contract with independent investment advisors, investment counsel or managers, banks, or trust companies so to act; and

(3) authorize the payment of compensation for investment advisory or management services.

History: En. Sec. 5, Ch. 389, L. 1973; R.C.M. 1947, 86-805.

72-30-206. Standard of care in management. In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long- and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

History: En. Sec. 6, Ch. 389, L. 1973; R.C.M. 1947, 86-806.

72-30-207. Release of restrictions in gift instrument. (1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(2) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the appropriate court

for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(3) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(4) This section does not limit the application of the doctrine of cy-pres.

History: En. Sec. 7, Ch. 389, L. 1973; R.C.M. 1947, 86-807.

CHAPTER 31

MISCELLANEOUS PROVISIONS RELATING TO FIDUCIARIES

Part 1 — General

72-31-101. Oath in behalf of corporation acting as fiduciary.
72-31-102. Investment by fiduciaries in home owners' loan corporation bonds authorized.
72-31-103. Validation of fiduciary sales.

Part 2 — Statutory Form Power of Attorney Act

72-31-201. Statutory form of power of attorney.
72-31-202 through 72-31-208. Renumbered by Code Commissioner, 1993.
72-31-209. Repealed.
72-31-210. Repealed.
72-31-211. Renumbered 72-31-232 by Code Commissioner, 1993.
72-31-212. Renumbered 72-31-233 by Code Commissioner, 1993.
72-31-213 through 72-31-216. Repealed.
72-31-217 through 72-31-221 reserved.
72-31-222. Durable power of attorney.
72-31-223. Construction of powers generally.
72-31-224. Construction of power relating to real property transactions.
72-31-225. Construction of power relating to tangible personal property transactions.
72-31-226. Construction of power relating to stock and bond transactions.
72-31-227. Construction of power relating to commodity and option transactions.
72-31-228. Construction of power relating to banking and other financial institution transactions.
72-31-229. Construction of power relating to business operating transactions.
72-31-230. Construction of power relating to insurance transactions.
72-31-231. Construction of power relating to estate, trust, and other beneficiary transactions.
72-31-232. Construction of power relating to claims and litigation.
72-31-233. Construction of power relating to personal and family maintenance.
72-31-234. Construction of power relating to benefits from social security, medicare, medicaid, or other governmental programs or from military service.
72-31-235. Construction of power relating to retirement plan transactions.
72-31-236. Construction of power relating to tax matters.
72-31-237. Existing interests — foreign interests.
72-31-238. Uniformity of application and construction.

Chapter Cross-References

Resulting and constructive trusts, Title 72, ch. 33, part 2.

Part 1

General

72-31-101. Oath in behalf of corporation acting as fiduciary. In all matters where a corporation is authorized to act as trustee, guardian, executor, administrator, or in any fiduciary capacity and an oath of office is required, it shall be competent for an officer of such corporation to take the required oath for and on behalf of his corporation, and such corporation shall thereby become amenable to the laws relating to individuals in like matters, so far as such laws may be applied to a corporation.

History: En. Sec. 1, Ch. 15, L. 1905; re-en. Sec. 7194, Rev. C. 1907; re-en. Sec. 9828, R.C.M. 1921; re-en. Sec. 9828, R.C.M. 1935; R.C.M. 1947, 93-8713.

Cross-References

Uniform Common Trust Act, Title 32, ch. 1, part 7.

72-31-102. Investment by fiduciaries in home owners' loan corporation bonds authorized. Notwithstanding any other provision of law, it shall be lawful for any executor, administrator, guardian or conservator, trustee, or other fiduciary to invest the funds or moneys in his custody or possession, eligible for investment, in bonds of the home owners' loan corporation or debentures issued by the federal housing administrator, guaranteed as to principal and interest by the United States government.

History: En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1937; R.C.M. 1947, 35-142(part).

72-31-103. Validation of fiduciary sales. All sales, provided no action is pending on July 1, 1973, to set aside such deed or conveyance, by trustees, executors, administrators, and guardians which previous to January 1, 1973, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's, or guardian's deed or conveyance to such purchaser and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if executed on July 1, 1973, or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent, or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator, or guardian shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 81, L. 1973; R.C.M. 1947, 91-4328.

Part 2

Statutory Form Power of Attorney Act

72-31-201. Statutory form of power of attorney. (1) The following statutory form of power of attorney is legally sufficient:

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THIS PART. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I .... (insert your name and address) appoint .... (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

. . . . (A) real property transactions;
. . . . (B) tangible personal property transactions;
. . . . (C) stock and bond transactions;
. . . . (D) commodity and option transactions;
. . . . (E) banking and other financial institution transactions;
. . . . (F) business operating transactions;
. . . . (G) insurance and annuity transactions;
. . . . (H) estate, trust, and other beneficiary transactions;
. . . . (I) claims and litigation;
. . . . (J) personal and family maintenance;
. . . . (K) benefits from social security, medicare, medicaid, or other governmental programs or from military service;
. . . . (L) retirement plan transactions;
. . . . (M) tax matters;
. . . . (N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:
ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL
INSTRUCTIONS LIMITING OR EXTENDING
THE POWERS GRANTED TO YOUR AGENT.

. . . .
. . . .
. . . .
. . . .
. . . .
. . . .
. . . .

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

. . . . This power of attorney revokes all previous powers of attorney signed by me.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU.

IF YOU DO WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU, YOU SHOULD READ THOSE POWERS OF ATTORNEY AND SATISFY THEIR PROVISIONS CONCERNING REVOCATION. THIRD PARTIES WHO RECEIVED COPIES OF THOSE POWERS OF ATTORNEY SHOULD BE NOTIFIED.

. . . . This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

If it becomes necessary to appoint a conservator of my estate or guardian of my person, I nominate my agent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT TO NOMINATE YOUR AGENT AS CONSERVATOR OR GUARDIAN.

If any agent named by me dies, becomes incompetent, resigns or refuses to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to the agent:

1. . . . .
2. . . . .
3. . . . .

For purposes of this subsection, a person is considered to be incompetent if and while: (1) the person is a minor; (2) the person is an adjudicated incompetent or disabled person; (3) a conservator has been appointed to act for the person; (4) a guardian has been appointed to act for the person; or (5) the person is unable to give prompt and intelligent consideration to business matters as certified by a licensed physician.

I agree that any third party who receives a copy of this document may act under it. I may revoke this power of attorney by a written document that expressly indicates my intent to revoke. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this . . . . day of . . . ., 19 . . .

. . . .
(Your Signature)

. . . .
(Your Social Security Number)

State of . . . .
(County) of . . . .

This document was acknowledged before me on

. . . .
(Date) by

. . . .
(Name of Principal)

. . . .
(Signature of Notarial Officer)

. . . .
(Seal, if any) (Title (and Rank))
[My commission expires: . . . . .]

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

(2) A statutory power of attorney is legally sufficient under this part if the wording of the form substantially complies with subsection (1), the form is properly completed, and the signature of the principal is acknowledged.

(3) If the line in front of (N) of the form under subsection (1) is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N).

History: En. Sec. 1, Ch. 580, L. 1991; amd. Sec. 113, Ch. 494, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text setting forth the legally sufficient form of a power of attorney for former text that read: "(1) The use of the following form, or a form substantially similar to the following form, in the creation of a power of attorney is lawful, and when used, the form must be construed in accordance with the provisions of this part:

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN 72-31-202 THROUGH 72-31-216. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT ADVICE. THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES IS ALSO PERMITTED. THIS POWER OF ATTORNEY MAY BE REVOKED BY YOU IF YOU LATER WISH TO DO SO. THIS POWER OF ATTORNEY AUTHORIZES BUT DOES NOT REQUIRE THE ATTORNEY-IN-FACT TO ACT FOR YOU.

Know all by these presents, which are intended to constitute a STATUTORY SHORT FORM POWER OF ATTORNEY pursuant to this section:

That I .... (insert name and address of the principal) do hereby appoint .... (insert name and address of the attorney-in-fact or each attorney-in-fact if more than one is designated) my attorney(s)-in-fact to act (jointly):

(NOTE: If more than one attorney-in-fact is designated and the principal wishes each attorney-in-fact alone to be able to exercise the power conferred, delete the word "jointly". Failure to delete the word "jointly" will require the attorneys-in-fact to act unanimously.)

First: in my name, place, and stead in any way that I myself could do, if I were personally present, with respect to the following matters as each of them is defined in 72-31-202 through

(To grant to the attorney-in-fact any of the following powers, make a check or "X" in the line in front of each power being granted. To delete any of the following powers, do not make a check or "X" in the line in front of the power. You may, but need not, cross out each power being deleted with a line drawn through it (or in similar fashion). Failure to make a check or "X" in the line in front of the power will have the effect of deleting the power unless the line in front of the power of (O) is checked or X-ed.)

Check or "X"

.... (A) real property transactions;

.... (B) tangible personal property transactions;

.... (C) bond, share, and commodity transactions;

.... (D) banking transactions;

.... (E) business operating transactions;

.... (F) insurance transactions;

.... (G) beneficiary transactions;

.... (H) gift transactions;

.... (I) fiduciary transactions;

.... (J) claims and litigation;

.... (K) family maintenance;

.... (L) benefits from military service;

.... (M) records, reports, and statements;

.... (N) all other matters;

.... (O) all of the powers listed in (A) through (N).

Second: (You must indicate below whether or not this power of attorney will be effective if you become incompetent. Make a check or "X" in the line in front of the statement that expresses your intent.)

..... This power of attorney shall continue to be effective if I become incompetent. It shall not be affected by my later disability or incompetency.

..... This power of attorney shall not be effective if I become incompetent.

Third: (You must indicate below whether or not this power of attorney authorizes the attorney-in-fact to transfer your property directly to the attorney-in-fact. Make a check or "X" in the line in front of the statement that expresses your intent.)

..... This power of attorney authorizes the attorney-in-fact to receive the transfer directly.

..... This power of attorney does not authorize the attorney-in-fact to receive the transfer directly.

In witness whereof I have hereunto signed my name this .... day of ...., 19...

. . . .

(Signature of Principal)

(Acknowledgment)

Specimen Signature of Attorney(s)-in-Fact

. . . .

. . . .

(2) Any of the powers of the form in subsection (1) that are not checked or X-ed are withheld by the principal from the attorney-in-fact unless the power of (O) on the form in subsection (1) is checked or X-ed. The with-

holding by the principal from the attorney-in-fact of any of the powers of (A) through (M), in addition to the withholding of the power of (O), on the form in subsection (1) automatically constitutes withholding of the powers of (N).

(3) To constitute a "statutory short form power of attorney", as this phrase is used in this part, the wording and content of the form in subsection (1) must be duplicated on a form substantially similar to the form provided in subsection (1), the notices must appear in a conspicuous place and manner, the second and third parts must be properly completed, and the signature of the principal must be acknowledged.

(4) All powers enumerated in 72-31-202 through 72-31-216 may be legally performed by an attorney-in-fact acting on behalf of a principal."

72-31-202 through 72-31-208. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-31-202. Renumbered 72-31-224.
72-31-203. Renumbered 72-31-225.
72-31-204. Renumbered 72-31-226.
72-31-205. Renumbered 72-31-228.
72-31-206. Renumbered 72-31-229.
72-31-207. Renumbered 72-31-230.
72-31-208. Renumbered 72-31-231.

72-31-209. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 9, Ch. 580, L. 1991.

72-31-210. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 10, Ch. 580, L. 1991.

72-31-211. Renumbered 72-31-232 by Code Commissioner, 1993.

72-31-212. Renumbered 72-31-233 by Code Commissioner, 1993.

72-31-213 through 72-31-216. Repealed. Sec. 134, Ch. 494, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

72-31-213. En. Sec. 13, Ch. 580, L. 1991.
72-31-214. En. Sec. 14, Ch. 580, L. 1991.
72-31-215. En. Sec. 15, Ch. 580, L. 1991.
72-31-216. En. Sec. 16, Ch. 580, L. 1991.

72-31-217 through 72-31-221 reserved.

72-31-222. Durable power of attorney. A power of attorney legally sufficient under this part is durable to the extent that durable powers are permitted by other law of this state and the power of attorney contains language, such as "This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent." showing the intent of the principal that the power granted may be exercised notwithstanding later disability, incapacity, or incompetency.

History: En. Sec. 114, Ch. 494, L. 1993.

72-31-223. Construction of powers generally. By executing a statutory power of attorney with respect to a subject listed in 72-31-201(1), the principal, except as limited or extended by the principal in the power of attorney, empowers the agent for that subject to:

(1) demand, receive, and obtain, by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled and conserve, invest, disburse, or use anything so received for the purposes intended;

(2) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, reform,

release, or modify the contract or another contract made by or on behalf of the principal;

(3) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(6) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(7) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(8) prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(9) reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and

(10) in general, do any other lawful act with respect to the subject.

History: En. Sec. 115, Ch. 494, L. 1993.

72-31-224. Construction of power relating to real property transactions. In a statutory power of attorney, the language granting power with respect to real property transactions empowers the agent to:

(1) accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property;

(2) sell, exchange, or convey, with or without covenants; quitclaim; release; surrender; mortgage; encumber; partition; consent to partitioning; subdivide; apply for zoning, rezoning, or other governmental permits; plat or consent to platting; develop; grant options concerning; lease; sublet; or otherwise dispose of an interest in real property or a right incident to real property;

(3) release, assign, satisfy, and enforce, by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is asserted;

(4) do any act of management or of conservation with respect to an interest in real property or a right incident to real property, owned or claimed to be owned by the principal, including:

(a) insuring against a casualty, liability, or loss;

(b) obtaining or regaining possession or protecting the interest or right, by litigation or otherwise;

(c) paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them; and

(d) purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;

(5) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has or claims to have an interest or right;

(6) participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization and to act with respect to them, including:

(a) selling or otherwise disposing of them;

(b) exercising or selling an option, conversion, or similar right with respect to them; and

(c) voting them in person or by proxy;

(7) change the form of title of an interest in or right incident to real property;

(8) dedicate to public use, with or without consideration, easements or other real property in which the principal has or claims to have an interest.

History: En. Sec. 2, Ch. 580, L. 1991; amd. Sec. 116, Ch. 494, L. 1993; Sec. 72-31-202, MCA 1991; redes. 72-31-224 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning construction of a statutory power of attorney with respect to real property transactions for former text that read: "(1) In a statutory short form power of attorney, the language conferring general authority with respect to real property transactions means that the principal authorizes the attorney-in-fact:

(a) to accept as a gift or as security for a loan or to reject, demand, buy, lease, receive, or otherwise acquire either ownership or possession of any estate or interest in real property;

(b) to sell, exchange, convey either with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to the partitioning, plat or consent to platting, grant options concerning, lease or sublet, or otherwise dispose of any estate or interest in real property;

(c) to release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce by action, proceeding, or otherwise any mortgage, encumbrance, lien, or other claim to real property that exists or is claimed to exist in favor of the principal;

(d) to do any act of management or of conservation with respect to any estate or interest in real property owned or claimed to be owned by the principal, including, by way of illustration but not of restriction, power to insure against any casualty, liability, or loss; to obtain or regain possession or protect the estate or interest by action, proceeding, or otherwise; to pay, compromise, or contest taxes or assessments; to apply for and receive refunds in connection with taxes or assessments; and to purchase supplies, hire assistance or labor, and make repairs or alterations in the structures or lands;

(e) to use in any way, develop, modify, alter, replace, remove, erect, or install structures or other improvements upon any real property in which the principal has or claims to have any estate or interest;

(f) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of an interest in real property or of one or more of the transactions enumerated in this section; to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(g) to participate in any reorganization with respect to real property and receive and hold any shares of stock or instrument of similar character received in accordance with a plan of reorganization and to act with respect to the shares, including, by way of illustration but not of restriction, power to sell or to otherwise dispose of the shares; to exercise or sell any option, conversion, or similar right with respect to the shares, and to vote on the shares in person or by the granting of a proxy;

(h) to agree and contract, in any manner, with any person, and on any terms that the attorney-in-fact may select, for the accomplishment of any of the purposes enumerated in this section and to perform, rescind, reform, release, or modify an agreement, contract, or any other similar agreement or contract made by or on behalf of the principal;

(i) to execute, acknowledge, seal, and deliver any deed, revocation, mortgage, lease, notice, check, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(j) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any real estate transaction or to intervene in any action or proceeding relating to the claim;

(k) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution of any of the powers described in this section and for the keeping of needed records; and

(l) in general and in addition to all the specific acts in this section, to do any other act with respect to any estate or interest in real property.

(2) All powers described in this section are exercisable equally with respect to any estate or interest in real property owned by the principal at the giving of the power of attorney or acquired after that time, whether located in Montana or elsewhere."

72-31-225. Construction of power relating to tangible personal property transactions. In a statutory power of attorney, the language granting power with respect to tangible personal property transactions empowers the agent to:

(1) accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) release, assign, satisfy, or enforce, by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property; and

(4) do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(a) insuring against casualty, liability, or loss;

(b) obtaining or regaining possession or protecting the property or interest, by litigation or otherwise;

(c) paying, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(d) moving from place to place;

(e) storing for hire or on gratuitous bailment; and

(f) using, altering, and making repairs or alterations.

History: En. Sec. 3, Ch. 580, L. 1991; amd. Sec. 117, Ch. 494, L. 1993; Sec. 72-31-203, MCA 1991; redes. 72-31-225 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in introductory clause, after "language", substituted "granting power" for "conferring general authority" and after "transactions" substituted "empowers the agent to" for "means that the principal authorizes the attorney-in-fact"; in (2), after "hypothecate", inserted "create a security interest in"; in (3), after "release", "assign", and "satisfy", deleted reference to in whole or in part, after "by" substituted "litigation" for "action, proceeding", after "mortgage" inserted "security interest", and after "claim" substituted "on behalf" for "that exists or is claimed to exist in favor"; in (4), near middle after "property", substituted "on behalf of" for "owned or claimed to be owned by" and at end, after "including", deleted "by way of illustration but not of restriction, power"; in (4)(b), before "property", deleted "tangible personal" and after "interest" substituted "by litigation" for "in any tangible personal property by action, proceeding"; in (4)(f), after "alterations", deleted "of any tangible personal property or interest in any tangible personal property"; deleted former (1)(e) through (1)(j) that read: "(e) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any tangible personal property or of any interest in any tangible personal property or of one or more of the transactions enumerated in this section; to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(f) to agree and contract, in any manner, with any person, and on any terms that the attorney-in-fact may select, for the accomplishment of any of the purposes enumerated in this section and to perform, rescind, reform, release, or modify any agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

(g) to execute, acknowledge, seal, and deliver any conveyance, mortgage, lease, notice, check, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(h) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any tangible personal property transaction or to intervene in any action or proceeding relating to a claim;

(i) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records; and

(j) in general and in addition to all the specific acts listed in this section, to do any other acts with respect to any tangible personal property or interest in any tangible personal property"; deleted former (2) that read: "(2) All powers described in this section are exercisable equally with respect to any tangible personal property or interest in any tangible personal property owned by the principal at the giving of the power of attorney or acquired after that time, whether located in Montana or elsewhere"; and made minor changes in style.

72-31-226. Construction of power relating to stock and bond transactions. In a statutory power of attorney, the language granting power with respect to stock and bond transactions empowers the agent to buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments except commodity futures contracts; call and put options on stocks and stock indexes; receive certificates and other evidences of ownership with respect to securities; exercise voting rights with respect to securities in person or by proxy; enter into voting trusts; and consent to limitations on the right to vote.

History: En. Sec. 4, Ch. 580, L. 1991; amd. Sec. 118, Ch. 494, L. 1993; Sec. 72-31-204, MCA 1991; redes. 72-31-226 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 substituted current text concerning construction of statutory power of attorney with respect to stock and bond transactions for former text that read: "(1) In a statutory short form power of attorney, the language conferring general authority with respect to bond, share, and commodity transactions means that the principal authorizes the attorney-in-fact:

(a) to accept as a gift or as security for a loan or to reject, demand, buy, receive, or otherwise acquire either ownership or possession of any bond, share, instrument of similar character, commodity interest, or any instrument with respect to the bond, share, or interest, together with the interest, dividends, proceeds, or other distributions connected with any of those instruments;

(b) to sell or sell short and to exchange, transfer either with or without a guaranty, release, surrender, hypothecate, pledge, grant options concerning, loan, trade in, or otherwise to dispose of any bond, share, instrument of similar character, commodity interest, or any instrument with respect to the bond, share, or interest;

(c) to release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce by action, proceeding, or otherwise any pledge, encumbrance, lien, or other claim as to any bond, share, instrument of similar character, commodity interest, or any interest with respect to the bond, share, or interest when the pledge, encumbrance, lien, or other claim is owned or claimed to be owned by the principal;

(d) to do any act of management or of conservation with respect to any bond, share, instrument of similar character, commodity interest, or any instrument with respect to the interest owned or claimed to be owned by the principal or in which the principal has or claims to have an interest, including, by way of illustration but not of restriction, power to insure against any casualty, liability, or loss; to obtain or regain possession or protect the principal's interest by action, proceeding, or otherwise; to pay, compromise, or contest taxes or assessments; to apply for and receive refunds in connection with taxes or assessments; to consent to and participate in any reorganization, recapitalization, liquidation, merger, consolidation, sale, lease, or other change in or revival of a corporation or other association, in the financial structure of any corporation or other association, or in the priorities, voting rights, or other special rights with respect to the corporation or association; to become a depositor with any protective, reorganization, or similar committee of the bond, share, other instrument of similar character, commodity interest, or any instrument with respect to the bond, share, or interest belonging to the principal; to make any payments reasonably incident to the foregoing; to exercise or sell any option, conversion, or similar right; to vote in person or by the granting of a proxy with or without the power of substitution, either discretionary, general, or otherwise, for the accomplishment of any of the purposes enumerated in this section;

(e) to carry in the name of a nominee selected by the attorney-in-fact any evidence of the ownership of any bond, share, other instrument of similar character, commodity interest, or instrument with respect to the bond, share, or interest, belonging to the principal;

(f) to employ, in any way believed to be desirable by the attorney-in-fact, any bond, share, other instrument of similar character, commodity interest, or any instrument with respect to the bond, share, or interest in which the principal has or claims to have any interest for the protection or continued operation of any speculative or margin transaction personally begun or personally guaranteed, in whole or in part, by the principal;

(g) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any interest in a bond, share, other instrument of similar character, commodity interest, or any instrument with respect to the bond, share, interest, or of one or more of the transactions enumerated in this section; to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;

(h) to agree and contract, in any manner, with any broker or other person, and on any terms that the attorney-in-fact selects, for the accomplishment of any of the purposes enumerated in this section and to perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement made by or on behalf of the principal;

(i) to execute, acknowledge, seal, and deliver any consent, agreement, authorization, assignment, revocation, notice, waiver of notice, check, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(j) to execute, acknowledge, and file any report or certificate required by law or governmental regulation;

(k) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any bond, share, or commodity transaction or to intervene in any related action or proceeding;

(l) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution of any of the powers described in this section and for the keeping of needed records; and

(m) in general and in addition to all the specific acts listed in this section, to do any other acts with respect to any interest in any bond, share, other instrument of similar character, commodity interest, or instrument with respect to a commodity.

(2) All powers described in this section are exercisable equally with respect to any interest in any bond, share, instrument of similar character, commodity interest, or instrument with respect to a commodity owned by the principal at the giving of the power of attorney or acquired after that time, whether located in Montana or elsewhere."

72-31-227. Construction of power relating to commodity and option transactions. In a statutory power of attorney, the language granting power with respect to commodity and option transactions empowers the agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts; call and put options on stocks and stock indexes traded on a regulated option exchange; and establish, continue, modify, and terminate option accounts with a broker.

History: En. Sec. 119, Ch. 494, L. 1993.

72-31-228. Construction of power relating to banking and other financial institution transactions. In a statutory power of attorney, the language granting power with respect to banking and other financial institution transactions empowers the agent to:

(1) continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) hire a safe deposit box or space in a vault;

(4) contract to procure other services available from a financial institution as the agent considers desirable;

(5) withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;

(6) receive bank statements, vouchers, notices, and similar documents from a financial institution and to act with respect to them;

(7) enter a safe deposit box or vault and withdraw or add to the contents;

(8) borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(9) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order; receive the cash or other proceeds of those transactions; and accept a draft drawn by a person upon the principal and pay it when due;

(10) receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;

(11) apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(12) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

History: En. Sec. 5, Ch. 580, L. 1991; amd. Sec. 120, Ch. 494, L. 1993; Sec. 72-31-205, MCA 1991; redes. 72-31-228 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in introductory clause, after "statutory", deleted "short form", after "language" substituted "granting power" for "conferring general authority", after "banking" inserted "and other financial institution", and after "transactions" substituted "empowers the agent to" for "means that the principal authorizes the attorney-in-fact"; in (1), before "account", deleted "deposit"; in (2), at beginning, substituted "establish, modify, and terminate" for "to open in the name of the principal alone or in a way that clearly evidences the principal and attorney-in-fact relationship a deposit", after "account" substituted "or other banking arrangement" for "of any type", substituted "financial institution" for "institution that serves as a depository for funds", and at end substituted "agent" for "attorney-in-fact"; in (4) substituted "from a financial institution as the agent" for "by the banking institution as the attorney-in-fact"; in (5), at beginning, deleted "to make, sign, and deliver checks or drafts for any purpose and to", after "otherwise" substituted "money" for "any funds", after "custody of" substituted "a financial institution" for "any banking institution", and at end deleted "wherever located, either before or after the execution of the power of attorney"; deleted former (1)(d) that read: "(d) to prepare any necessary financial statements of the assets and liabilities or income and expenses of the principal for submission to any banking institution"; in (6), before "statements", inserted "bank", after "notices" substituted "and similar" for "or other", and substituted "financial institution" for "banking institution"; in (7), after "vault", substituted "and withdraw or add to the contents" for "that the principal could enter if personally present"; in (8), after "rate", substituted "agreeable to the agent" for "the attorney-in-fact selects", after "security" substituted "personal property" for "any assets", and after "principal" substituted "necessary in order to borrow" for "the attorney-in-fact considers desirable or necessary for borrowing"; in (9), after "notes", deleted "bills of exchange" and after "accept" deleted "any bill of exchange"; in (10), before "sight draft", substituted "act upon a" for "to deal in and to deal with any" and after "nonnegotiable instrument" deleted "in which the principal has or claims to have an interest"; in (11), after "letters of credit", inserted "credit cards, and traveler's checks", substituted "financial institution" for "banking institution selected by the attorney-in-fact", and at end, after "credit", deleted "that the attorney-in-fact considers desirable or necessary"; in (12), at end after "paper", substituted "or a financial transaction with a financial institution" for "or any banking transaction in which the principal has an interest or by which the principal is or might be affected in any way"; deleted former (1)(l) through (1)(p) that read: "(l) to demand, receive, obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any banking transaction and to reimburse the attorney-in-fact for any expenditures properly made in the execution of the powers conferred upon the attorney-in-fact by the statutory short form power of attorney;

(m) to execute, acknowledge, and deliver any instrument of any kind, in the name of the principal or otherwise, that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(n) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any banking transaction or to intervene in any related action or proceeding;

(o) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution of any of the powers described in this section and for the keeping of needed records;

(p) in general and in addition to all the specific acts listed in this section, to do any other acts in connection with any banking transaction that does or may in any way affect the financial or other interests of the principal"; deleted former (2) that read: "(2) All powers described in this section are exercisable equally with respect to any banking transaction engaged in by the principal at the giving of the power of attorney or engaged in after that time, whether conducted in Montana or elsewhere."; and made minor changes in style.

72-31-229. Construction of power relating to business operating transactions. In a statutory power of attorney, the language granting power with respect to business operating transactions empowers the agent:

(1) to operate, buy, sell, enlarge, reduce, and terminate a business interest;

(2) to the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement, to:

(a) perform a duty or discharge a liability and exercise a right, power, privilege, or option that the principal has, may have, or claims to have under a partnership agreement, whether or not the principal is a partner;

(b) enforce the terms of a partnership agreement by litigation or otherwise; and

(c) defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of membership in the partnership;

(3) to exercise in person or by proxy or enforce, by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of similar character and to defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of a bond, share, or similar instrument;

(4) with respect to a business owned solely by the principal, to:

(a) continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney;

(b) determine:

(i) the location of its operation;

(ii) the nature and extent of its business;

(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(iv) the amount and types of insurance carried;

(v) the mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees;

(c) change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business; and

(d) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business and control and disburse the money in the operation of the business;

(5) to put additional capital into a business in which the principal has an interest;

(6) to join in a plan of reorganization, consolidation, or merger of the business;

(7) to sell or liquidate a business or part of it at the time and upon the terms the agent considers desirable;

(8) to establish the value of a business under a buyout agreement to which the principal is a party;

(9) to prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business that are required by a governmental agency or instrumentality or that the agent considers desirable and to make related payments; and

(10) to pay, compromise, or contest taxes or assessments and to do any other act that the agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

History: En. Sec. 6, Ch. 580, L. 1991; amd. Sec. 121, Ch. 494, L. 1993; Sec. 72-31-206, MCA 1991; redes. 72-31-229 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in introductory clause, after "statutory", deleted "short form", after "language" substituted "granting power" for "conferring general authority", and after "transactions" substituted "empowers the agent to" for "means that the principal authorizes the attorney-in-fact"; inserted (1) concerning operation, continuation, or termination of business interest; inserted (2) concerning agent's authority under law and agreement; in (2)(a), at end before "partner", deleted "general or limited"; in (2)(b), after "agreement", substituted "by litigation or otherwise" for "for the protection of the principal, by action, proceeding, or otherwise, as the attorney-in-fact considers desirable or necessary"; in (2)(c), after "compromise", substituted "litigation" for "any action or other legal proceeding"; in (3), after "enforce, by", substituted "litigation" for "action, proceeding" and near end, after "compromise", substituted "litigation" for "any action or other legal proceeding"; in (4), after "business", deleted "enterprise"; in (4)(a), after "terminate", substituted "a contract made with an individual or a legal entity" for "any contractual arrangements made with any person, entity" and after "business" substituted "before execution" for "enterprise prior to the granting"; in (4)(b)(i), before "the location", deleted "the policy of the business enterprise as to" and after "location of" deleted "the site or sites to be used for"; in (4)(b)(v), after "mode of", substituted "engaging" for "securing", after "attorneys" deleted "servants", and after "employees" deleted "required for its operation; and to agree and to contract in any manner, with any person, and on any terms that the attorney-in-fact considers desirable or necessary for effectuating any or all of the decisions of the attorney-in-fact as to policy and to perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement or contract made by or on behalf of the principal"; in (4)(c), after "business", deleted "enterprise", after "take over" inserted "all or part of", and after "business" deleted "or any part of the business, as the attorney-in-fact considers desirable or necessary"; in (4)(d), after "principal", inserted "or on the principal's behalf", after "disburse the" substituted "money" for "funds", and after "operation of the" substituted "business" for "enterprise in any way that the attorney-in-fact considers desirable or necessary, and to engage in any banking transactions that the attorney-in-fact considers desirable or necessary for effectuating the execution of any of the powers of the attorney-in-fact described in this subsection (1)(c)"; inserted (5) concerning additional capital; inserted (6) concerning reorganization, consolidation, or merger; inserted (7) concerning sale or liquidation; inserted (8) concerning valuation in a buyout; in (9), after "business", deleted "operating transaction of the principal", after "agency" deleted "department", before "considers desirable" substituted "agent" for "attorney-in-fact", and after "considers desirable" deleted "or necessary for any purpose"; in (10), before "considers desirable", substituted "agent" for "attorney-in-fact", after "considers desirable" deleted "or necessary", and at end, after "attorney", deleted "as taxes, fines, penalties, or assessments"; deleted former (1)(f) through (1)(j) that read: "(f) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any business operation of the principal; to conserve, invest, disburse, or use anything so received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred upon the attorney-in-fact by the statutory short form power of attorney;

(g) to execute, acknowledge, seal, and deliver any deed, assignment, mortgage, lease, notice, consent, agreement, authorization, check, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(h) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any business operating transaction or to intervene in any related action or proceeding;

(i) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records; and

(j) in general and in addition to all the specific acts listed in this section, to do any other act that the attorney-in-fact considers desirable or necessary for the furtherance or protection of the interests of the principal in any business"; deleted former (2) that read: "(2) All powers described in this section are exercisable equally with respect to any business in which the principal is interested at the time of giving of the power of attorney or in which the principal becomes interested after that time, whether operated in Montana or elsewhere"; and made minor changes in style.

72-31-230. Construction of power relating to insurance transactions. In a statutory power of attorney, the language granting power with respect to insurance and annuity transactions empowers the agent to:

(1) continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents and to select the amount, type of insurance or annuity, and mode of payment;

(3) pay the premium or assessment on, modify, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

(4) designate the beneficiary of the contract; however, an agent may be named a beneficiary of the contract or of an extension, renewal, or substitute for the contract only to the extent that the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;

(5) apply for and receive a loan on the security of the contract of insurance or annuity;

(6) surrender and receive the cash surrender value;

(7) exercise an election;

(8) change the manner of paying premiums;

(9) change or convert the type of insurance contract or annuity, with respect to which the principal has or claims to have a power described in this section;

(10) change the beneficiary of a contract of insurance or annuity; however, the agent may not be designated a beneficiary except to the extent permitted by subsection (4);

(11) apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;

(12) collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity; and

(13) pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

History: En. Sec. 7, Ch. 580, L. 1991; amd. Sec. 122, Ch. 494, L. 1993; Sec. 72-31-207, MCA 1991; redes. 72-31-230 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in introductory clause, after "statutory", deleted "short form", after "language" substituted "granting power" for "conferring general authority", after "insurance" inserted "and annuity", and after "transactions" substituted "empowers the agent to" for "means that the principal authorizes the attorney-in-fact"; in (1), after "contract", deleted "of life, accident, health, or disability insurance or any contract for the provision of health care services or any combination of these contracts", after "principal" deleted "prior to the granting of the power of attorney", and after "that insures" inserted "or provides an annuity to"; in (2), after "contracts of", deleted "life, accident, health, or disability", after "insurance" inserted "and annuities", after "principal" substituted "and the principal's spouse, children, and other dependents and" for "or contracts for provision of health care services for the principal", after "insurance" inserted "or annuity", and at end, after "payment", deleted "under each contract"; in (3), after "contract", inserted "of insurance or annuity" and after "procured by" substituted "the agent" for "the attorney-in-fact"; in (4), after "however", substituted "an agent" for "that the attorney-in-fact", after "beneficiary" substituted "of the contract or of an extension, renewal, or substitute for the contract only to the extent that the agent" for "except if permitted under 72-31-208, the attorney-in-fact may be named the beneficiary of death benefit proceeds under an insurance contract or if the attorney-in-fact", after "principal" substituted "before executing" for "prior to the granting", and at end, after "power of attorney", deleted "the attorney-in-fact may continue to be named as the beneficiary under the contract or under any extension or renewal of or substitute for the contract"; in (5), at beginning, deleted "with respect to any contract of life, accident, health, disability, or liability insurance as to which the principal has or claims to have any one or more of the powers described in this section, to", after "receive" deleted "any available", and after "insurance" substituted "or annuity" for "whether for the payment of a premium or for the procuring of cash"; in (7), after "election", deleted "as to beneficiary or mode of payment"; in (9), after "contract", inserted "or annuity, with respect to which the principal has or claims to have a power described in this section"; in (10), after "insurance", inserted "or annuity", after "however" substituted "the agent" for "the attorney-in-fact", and after "may not be" substituted "designated a beneficiary except to the extent permitted by subsection (4)" for "a new beneficiary, except if permitted under 72-31-208, the attorney-in-fact may be the beneficiary of death benefit proceeds under an insurance contract or if the attorney-in-fact was named as a beneficiary under the contract that was procured by the principal prior to the granting of the power of attorney, the attorney-in-fact may continue to be named as the beneficiary under the contract or under any extension or renewal of or substitute for the contract"; deleted former (1)(d) that read: "(d) to demand, receive, or obtain by action, proceeding, or otherwise any money, dividend, or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any contract of insurance or of one or more of the transactions enumerated in this section; to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney"; in (12), before "sell", inserted "collect" and after "insurance" inserted "or annuity"; in (13), after "insurance", inserted "or annuity" and after "proceeds" deleted "of the refunds"; deleted former (1)(h) through (1)(m) that read: "(h) to agree and contract, in any manner, with any person, and on any terms that the attorney-in-fact selects, for the accomplishment of any of the purposes enumerated in this section and to perform, rescind, reform, release, or modify the agreement or contract;

(i) to execute, acknowledge, seal, and deliver any consent, demand, request, application, agreement, indemnity, authorization, assignment, pledge, notice, check, receipt, waiver, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(j) to continue, procure, pay the premium or assessment on, modify, rescind, release, terminate, or otherwise deal with any contract of insurance, other than those enumerated in subsection (1)(a) or (1)(b), whether fire, marine, burglary, compensation, liability, hurricane, casualty, or other type, or any combination of insurance or to do any act or acts with respect to the contract or with respect to its proceeds or enforcement that the attorney-in-fact considers desirable or necessary for the promotion or protection of the interests of the principal;

(k) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any insurance transaction or to intervene in any related action or proceeding;

(l) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers the action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records; and

(m) in general and in addition to all the specific acts listed in this section, to do any other acts in connection with procuring, supervising, managing, modifying, enforcing, and terminating contracts of insurance or for the provisions of health care services in which the principal is the insured or is otherwise in any way interested"; deleted former (2) that read: "(2) All powers described in this section are exercisable with respect to any contract of insurance or for the provision of health care service in which the principal is in any way interested, whether made in Montana or elsewhere"; and made minor changes in style.

72-31-231. Construction of power relating to estate, trust, and other beneficiary transactions. In a statutory power of attorney, the language granting power with respect to estate, trust, and other beneficiary transactions, empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled as a beneficiary to a share or payment, including to:

(1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;

(2) demand or obtain, by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund;

(3) initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(4) initiate, participate in, and oppose litigation to remove, substitute, or surcharge a fiduciary;

(5) conserve, invest, disburse, and use anything received for an authorized purpose; and

(6) transfer an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.

History: En. Sec. 8, Ch. 580, L. 1991; amd. Sec. 123, Ch. 494, L. 1993; Sec. 72-31-208, MCA 1991; redes. 72-31-231 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in introductory clause, after "statutory", deleted "short form", after "language" substituted "granting power" for "conferring general authority", before "beneficiary transactions" inserted "estate, trust, and other", and after "transactions" substituted "empowers the agent to" for "means that the principal authorizes the attorney-in-fact to represent and"; in (2), after "obtain, by", substituted "litigation" for "action, proceeding"; in (3), after "oppose", substituted "litigation to ascertain" for "any proceeding, judicial, or otherwise, for the ascertainment of", after "deed" inserted "will", and after "or other" inserted "instrument or"; in (4), after "oppose", substituted "litigation to remove, substitute" for "any proceeding, judicial or otherwise, for the removal, substitution"; in (5), after "received for", substituted "an authorized purpose" for "purposes listed in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney"; deleted former (1)(a)(iii) through (1)(a)(vii) that read: "(iii) to prepare, sign, file, and deliver all reports, compilations of information, returns, or papers with respect to any interest had or claimed by or on behalf of the principal in the fund; to pay, compromise, contest, or apply for and receive refunds in connection with any tax or assessment, with respect to any interest had or claimed by or on behalf of the principal in the fund or with respect to any property in which an interest is had or claimed;

(iv) to agree and contract in any manner, with any person, and on any terms the attorney-in-fact selects, for the accomplishment of the purposes listed in this section and to perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

(v) to execute, acknowledge, verify, seal, file, and deliver any deed, assignment, mortgage, lease, consent, designation, pleading, notice, demand, election, conveyance, release, assignment, check, pledge, waiver, admission of service, notice of appearance, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(vi) to submit to arbitration, settle, and propose or accept a compromise with respect to any controversy or claim that affects the administration of the fund, in any one of which the principal has or claims to have an interest and to do any and all acts that the attorney-in-fact considers to be desirable or necessary in effectuating the compromise;

(vii) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records"; in (6), after "transfer", deleted "any part or all of any", after "real" substituted "property" for "estate", after "accounts" inserted "with financial institutions", after "insurance, and other" substituted "property" for "assets of any kind and nature", and at end substituted "settlor" for "grantor"; deleted former (1)(b) that read: "(b) in general and in addition to all the specific acts listed in this section, to do any other acts with respect to the administration of a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund in which the principal has or claims to have an interest as a beneficiary"; deleted former (2) and (3) that read: "(2) For the purposes of subsection (1), "fund" means any trust, probate estate, guardianship, conservatorship, escrow, custodianship, or any other fund in which the principal has or claims to have an interest.

(3) All powers described in this section are exercisable equally with respect to the administration or disposition of any trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund in which the principal is interested at the giving of the power of attorney or becomes interested after that time as a beneficiary, whether located in Montana or elsewhere"; and made minor changes in style.

72-31-232. Construction of power relating to claims and litigation. In a statutory power of attorney, the language with respect to claims and litigation empowers the agent to:

(1) assert and prosecute before a court or administrative agency a claim, counterclaim, or offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief;

(2) bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae;

(3) in connection with litigation, procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) in connection with litigation, perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation;

(5) submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;

(6) waive the issuance and service of process upon the principal; accept service of process; appear for the principal; designate persons upon whom process directed to the principal may be served; execute and file or deliver stipulations on the principal's behalf; verify pleadings; seek appellate review; procure and give surety and indemnity bonds; contract and pay for the preparation and printing of records and briefs; and receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7) act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, with respect to a reorganization proceeding or a receivership or

application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value; and

(8) pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

History: En. Sec. 11, Ch. 580, L. 1991; amd. Sec. 124, Ch. 494, L. 1993; Sec. 72-31-211, MCA 1991; redes. 72-31-232 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in introductory clause, after "statutory", deleted "short form", after "language" deleted "conferring general authority", and after "litigation" substituted "empowers the agent to" for "means that the principal authorizes the attorney-in-fact"; in (1), after "administrative", substituted "agency" for "board, department, commissioner, or other tribunal any cause of action", after "offset" substituted "and defend" for "or defense, that the principal has or claims to have", and after "individual" substituted "legal entity or government, including suits to recover property" for "partnership, association, corporation, government, or other person or instrumentality, including, by way of illustration and not of restriction, power to sue for the recovery of land"; in (2), after "action", deleted "of interpleader or other action" and after "intervene" substituted "in litigation" for "or interplead in any action or proceeding"; in (3), after "connection with", substituted "litigation" for "any action or proceeding or controversy at law or otherwise, to apply for and, if possible" and after "relief and" substituted "use an" for "to resort to and to utilize in all ways permitted by law any"; in (4), after "connection with", substituted "litigation" for "any action or proceeding, at law or otherwise", after "perform any" substituted "lawful act" for "act that the principal might perform, including, by way of illustration and not of restriction", and at end, after "litigation", deleted "or controversy as seems desirable to the attorney-in-fact"; in (5), after "claim", deleted "existing in favor of or against the principal" and after "litigation" deleted "to which the principal is, may become, or may be designated a party"; in (6), after "service of", deleted "a summons, citation, or other", after "pleadings" substituted "seek appellate review" for "to appeal to appellate tribunals", after "bonds" deleted "at the times and to the extent the attorney-in-fact considers desirable or necessary", after "instrument" deleted "that the attorney-in-fact considers desirable or necessary", and after "defense" substituted "of a claim or litigation" for "of any claim by or against the principal or of any litigation to which the principal is, may become, or may be designated a party"; in (7), at beginning before "act", deleted "to appear for, represent, and" and after "principal in" substituted "property" for "any real property, bond, share, commodity interest, tangible personal property"; deleted former (1)(h) that read: "(h) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution of any of the powers described in this section"; in (8), after "pay", deleted "from funds in the control of the attorney-in-fact or for the account of the principal", after "connection with" substituted "litigation" for "any transaction enumerated in this section", and at end, after "proceeds of", substituted "a claim or litigation" for "one or more of the transactions enumerated in this section, and to receive, endorse, and deposit checks"; deleted former (1)(j) that read: "(j) in general and in addition to all the specific acts listed in this section, to do any other acts in connection with any claim by or against the principal or with litigation to which the principal is, may become, or may be designated a party"; deleted former (2) that read: "(2) All powers described in this section are exercisable equally with respect to any claim or litigation existing at the giving of the power of attorney or arising after that time, whether arising in Montana or elsewhere"; and made minor changes in style.

72-31-233. Construction of power relating to personal and family maintenance. In a statutory power of attorney, the language granting power with respect to personal and family maintenance empowers the agent to:

(1) do the acts necessary to maintain the customary standard of living of the principal and the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract or paying the

operating costs, including interest, amortization payments, repairs, and taxes, on premises owned by the principal and occupied by those individuals;

(2) provide for the individuals described in subsection (1) normal domestic help; usual vacations and usual travel expenses; and funds for shelter, clothing, food, appropriate education, and other current living costs;

(3) pay for the individuals described in subsection (1) necessary medical, dental, and surgical care, hospitalization, and custodial care;

(4) continue any provision made by the principal for the individuals described in subsection (1) for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them;

(5) maintain or open charge accounts for the convenience of the individuals described in subsection (1) and open new accounts the agent considers desirable to accomplish a lawful purpose; and

(6) continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization or continue contributions to those organizations.

History: En. Sec. 12, Ch. 580, L. 1991; amd. Sec. 125, Ch. 494, L. 1993; Sec. 72-31-212, MCA 1991; redes. 72-31-233 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 494 in introductory clause, after "statutory", deleted "short form", after "language" substituted "granting power" for "conferring general authority", after "respect to" inserted "personal and" and after "maintenance" substituted "empowers the agent to" for "means that the principal authorizes the attorney-in-fact"; in (1), after "standard of living", substituted "of the principal and the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal" for "of the spouse, children, and other dependents, including, by way of illustration and not of restriction, power to" and at end, after "occupied by", substituted "those individuals" for "the principal's family or dependents"; in (2), at beginning, substituted "provide for the individuals described in subsection (1) normal domestic help" for "to provide normal domestic help for the operation of the household" and after "travel expenses" substituted "and funds for shelter, clothing, food, appropriate education, and other current living costs" for "to provide usual educational facilities; and to provide funds for all the current living costs of the spouse, children, and other dependents, including, among other things, shelter, clothing, food, and incidentals"; in (3), after "pay for", inserted "the individuals described in subsection (1)" and after "care" deleted "for the spouse, children, and other dependents of the principal"; in (4), after "made by the principal", substituted "for the individuals described in subsection (1) for" for "either prior to or after the execution of the power of attorney, for the principal's spouse, children, and other dependents with respect to" and after "including" substituted "registering, licensing, insuring, and replacing them" for "by way of illustration but not of restriction, power to license, insure, and replace any automobiles owned by the principal and customarily used by the spouse, children, or other dependents"; substituted (5) concerning maintaining or opening charge accounts for former text that read: "(d) to continue whatever charge accounts have been operated by the principal prior to the execution of the power of attorney or after execution of the power of attorney for the convenience of the principal's spouse, children, or other dependents; to open new accounts the attorney-in-fact considers to be desirable for the accomplishment of any of the purposes enumerated in this section; and to pay the items charged on those accounts by any person authorized or permitted by the principal to make charges prior to the execution of the power of attorney"; deleted former (1)(f) through (1)(j) that read: "(f) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled to as salary, wages, commission, or other remuneration for services performed, as a dividend or distribution upon any stock, or as interest or principal upon any indebtedness or any periodic distribution of profits from any partnership or business in which the principal has or claims an interest and to endorse, collect, or otherwise realize upon any instrument for the payment received;

(g) to use any asset of the principal for the performance of the powers enumerated in this section, including, by way of illustration and not of restriction, power to draw money by check or otherwise from any bank deposit of the principal; to sell any interest in real property, bonds, shares, commodity interests, tangible personal property, or other assets of the principal; and to borrow money and pledge as security for a loan, any asset, including insurance, that belongs to the principal;

(h) to execute, acknowledge, verify, seal, file, and deliver any application, consent, petition, notice, release, waiver, agreement, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(i) to hire, discharge, and compensate any attorney, accountant, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by any of the powers described in this section and for the keeping of needed records; and

(j) in general and in addition to all the specific acts listed in this section, to do any other acts for the welfare of the spouse, children, or other dependents or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends, and organizations as are appropriate"; deleted former (2) that read: "(2) All powers described in this section are exercisable equally whether the acts required for their execution relate to real or personal property owned by the principal at the giving of the power of attorney or acquired after that time, whether those acts are performable in Montana or elsewhere"; and made minor changes in style.

72-31-234. Construction of power relating to benefits from social security, medicare, medicaid, or other governmental programs or from military service. In a statutory power of attorney, the language granting power with respect to benefits from social security, medicare, medicaid or other governmental programs or from civil or military service empowers the agent to:

(1) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in 72-31-233(1), and for shipment of their household effects;

(2) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) receive the financial proceeds of a claim of the type described in this section and conserve, invest, disburse, or use anything received for a lawful purpose.

History: En. Sec. 126, Ch. 494, L. 1993.

72-31-235. Construction of power relating to retirement plan transactions. In a statutory power of attorney, the language granting power with respect to retirement plan transactions empowers the agent to:

(1) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

(2) designate beneficiaries under those plans and change existing designations;

(3) make voluntary contributions to those plans;

(4) exercise the investment powers available under any self-directed retirement plan;

(5) make "rollovers" of plan benefits into other retirement plans;

(6) if authorized by the plan, borrow from, sell assets to, and purchase assets from the plan; and

(7) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

History: En. Sec. 127, Ch. 494, L. 1993.

72-31-236. Construction of power relating to tax matters. In a statutory power of attorney, the language granting power with respect to tax matters empowers the agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act, and other tax returns; claims for refunds; requests for extension of time; petitions regarding tax matters; and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code section 2032A or any successor section), closing agreements, and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the internal revenue service and any other taxing authority.

History: En. Sec. 128, Ch. 494, L. 1993.

72-31-237. Existing interests — foreign interests. The powers described in this part are exercisable equally with respect to an interest the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the powers are exercised or the power of attorney is executed in this state.

History: En. Sec. 129, Ch. 494, L. 1993.

72-31-238. Uniformity of application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: En. Sec. 130, Ch. 494, L. 1993.

CHAPTER 32

RESERVED

CHAPTER 33

TRUST CODE

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Gifts and devises to estates, Title 70, ch. 1, part 7.

Uniform statutory rule against perpetuities, Title 72, ch. 2, part 10.

Part 1
General Provisions

72-33-101. Short title. Chapters 33 through 36 shall be known and may be cited as the "Trust Code".

History: En. Sec. 1, Ch. 685, L. 1989.

72-33-102. General rule concerning application of trust code. Except as otherwise provided by statute:

(1) After September 30, 1989, chapters 33 through 36 apply to all trusts regardless of when they were created, unless in the opinion of the court, application of a particular provision of chapters 33 through 36 would substantially interfere with the rights of the parties and other interested persons, in

which case the particular provision of chapters 33 through 36 does not apply and prior law applies.

(2) After September 30, 1989, chapters 33 through 36 apply to all proceedings concerning trusts whenever commenced, unless in the opinion of the court, application of a particular provision of chapters 33 through 36 would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of chapters 33 through 36 does not apply and prior law applies.

History: En. Sec. 2, Ch. 685, L. 1989.

72-33-103. Common law as law of state. Except to the extent that the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state.

History: En. Sec. 3, Ch. 685, L. 1989.

72-33-104. Constructive and resulting trusts not affected. Other than 72-33-216 through 72-33-220, nothing in chapters 33 through 36 affects the law relating to constructive or resulting trusts.

History: En. Sec. 4, Ch. 685, L. 1989.

72-33-105. Application of code to charitable trusts. Unless otherwise provided by statute, chapters 33 through 36 apply to charitable trusts that are subject to the jurisdiction of the attorney general.

History: En. Sec. 5, Ch. 685, L. 1989.

72-33-106. Laws affecting construction and operation of wills apply to trusts. (1) Title 72, chapter 2, part 6, and 72-3-901 apply to the construction and operation of trusts, except as provided in subsection (2).

(2) This section does not apply to any trust if its terms expressly or by necessary implication make this section inapplicable to it.

(3) For purposes of chapters 33 through 36, references in Title 72, chapter 2, part 6, and in 72-3-901 to a "testator" refer to the trustor, references to a "will" refer to a trust, references to a "devisee" refer to a trust beneficiary, and references to a "devise" refer to a trust distribution.

History: En. Sec. 6, Ch. 685, L. 1989.

72-33-107. Reference to statutes — amendments and additions. Whenever a reference is made to any portion of chapters 33 through 36 or to any other law, the reference applies to all amendments and additions made.

History: En. Sec. 8, Ch. 685, L. 1989.

72-33-108. Definitions. As used in chapters 33 through 36, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

(2) "Person" means an individual, a corporation, an organization, or other legal entity.

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(4) "Trust" when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto,

wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust and, unless otherwise provided in the trust instrument, a trust established in connection with bonds issued under Title 90, chapters 2 and 4 through 7. The term does not include conservatorships, personal representatives, custodial arrangements pursuant to chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trust company" means an entity which has qualified to engage in and conduct a trust business in this state.

(6) "Trust property" means the property held in trust.

(7) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(8) "Trustor" means the person who creates a trust.

History: En. Sec. 7, Ch. 685, L. 1989; amd. Sec. 1, Ch. 688, L. 1991.

Part 2

Creation and Validity of Trusts Resulting and Constructive Trusts

Part Cross-References

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31.

72-33-201. Methods of creating trust. Subject to other provisions of this chapter, a trust may be created by any of the following methods:

(1) a declaration by the owner of property that the owner holds the property as trustee;

(2) a transfer of property by the owner during the owner's lifetime to another person as trustee;

(3) a testamentary transfer of property by the owner to another person as trustee;

(4) an exercise of a power of appointment to another person as trustee; or

(5) an enforceable promise to create a trust.

History: En. Sec. 9, Ch. 685, L. 1989.

72-33-202. Intention to create trust. A trust is created only if the trustor properly manifests an intention to create a trust.

History: En. Sec. 10, Ch. 685, L. 1989.

72-33-203. Trust property. (1) A trust is created only if there is trust property.

(2) The requirement of subsection (1) may be satisfied if the trust (or its trustee) is designated to be beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device, even though the designation may be revoked.

History: En. Sec. 11, Ch. 685, L. 1989.

72-33-204. Trust purpose. A trust may be created for any purpose that is not illegal or against public policy.

History: En. Sec. 12, Ch. 685, L. 1989.

72-33-205. Trust for indefinite or general purposes. A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property comes within that purpose.

History: En. Sec. 13, Ch. 685, L. 1989.

Cross-References

Uniform statutory rule against perpetuities, Title 72, ch. 2, part 10.

72-33-206. Designation of beneficiary. (1) A trust, other than a charitable trust, is created only if there is a beneficiary.

(2) The requirement of subsection (1) is satisfied if the trust instrument provides for either of the following:

(a) a beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so it can be determined that some person meets the description or is within the class; or

(b) a grant of power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

History: En. Sec. 14, Ch. 685, L. 1989.

72-33-207. Designation of trust or trustee as beneficiary. (1) A trust or trustee may be designated as the beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device if the designation is made in accordance with the contract, plan, account, or device.

(2) Subsection (1) applies even though the trust or trustee is named or to be named by will or trust and whether or not the will or trust is in existence at the time of the designation.

History: En. Sec. 15, Ch. 685, L. 1989.

72-33-208. Statute of frauds. A trust is not valid unless evidenced by one of the following methods:

(1) by a written instrument signed by the trustee, or by the trustee's agent if authorized in writing to do so;

(2) by a written instrument signed by the trustor, or by the trustor's agent if authorized in writing to do so; or

(3) by operation of law.

History: En. Sec. 16, Ch. 685, L. 1989.

72-33-209. Consideration. Consideration is not required to create a trust, but a promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are satisfied.

History: En. Sec. 17, Ch. 685, L. 1989.

72-33-210. Exception to doctrine of merger. If a trust provides for one or more successor beneficiaries after the death of the trustor, the trust is not invalid, merged, or terminated in either of the following circumstances:

(1) where there is one trustor who is the sole trustee and the sole beneficiary during the trustor's lifetime; or

(2) where there are two or more trustors, one or more of whom are trustees, and the beneficial interest in the trust is in one or more of the trustors during the lifetime of the trustors.

History: En. Sec. 18, Ch. 685, L. 1989.

72-33-211 through 72-33-215 reserved.

72-33-216. Resulting trust upon failure of trust. Where the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or his estate, unless:

(1) the transferor manifested in the trust instrument an intention that no resulting trust should arise; or

(2) the intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

History: En. Sec. 19, Ch. 685, L. 1989.

72-33-217. Resulting trust upon full performance of trust. Where the owner of property gratuitously transfers it subject to a trust which is properly declared and which is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or his estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

History: En. Sec. 20, Ch. 685, L. 1989.

72-33-218. Purchase money resulting trust. (1) Where a transfer of property is made to one person and the purchase price is paid by another, a resulting trust arises in favor of the person who paid the purchase price.

(2) Subsection (1) does not apply in any of the following circumstances:

(a) whenever the party paying the purchase price manifests an intention that no resulting trust should arise;

(b) whenever the transferee is a spouse, child, or other natural object of the bounty of the person who paid the purchase price; or

(c) whenever the transfer is made in order to accomplish an illegal purpose and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

(3) Subsection (2)(b) does not apply if the party paying the purchase price manifested an intention that the transferee should not have the beneficial interest in the property.

History: En. Sec. 21, Ch. 685, L. 1989.

72-33-219. Constructive trust. A constructive trust arises when a person holding title to property is subject to an equitable duty to convey it to another on the ground that the person holding title would be unjustly enriched if he were permitted to retain it.

History: En. Sec. 22, Ch. 685, L. 1989.

Cross-References

Homicide — effect on intestate succession, wills, joint assets, life insurance, and beneficiary designations, 72-2-813.

72-33-220. Resulting trusts, constructive trusts — statute of frauds. Resulting trusts and constructive trusts are considered to arise by operation of law and are valid under 72-33-208(3).

History: En. Sec. 23, Ch. 685, L. 1989.

Part 3

Restrictions on Voluntary and Involuntary Transfers

72-33-301. Restraint on transfer of income. Except as provided in 72-33-305, if the trust instrument provides that a beneficiary's interest is not subject to voluntary or involuntary transfer, the beneficiary's interest in income under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

History: En. Sec. 24, Ch. 685, L. 1989.

72-33-302. Restraint on transfer of principal. (1) Except as provided in 72-33-305 and subsection (2) of this section, if the trust instrument provides that a beneficiary's interest in principal is not subject to voluntary or involuntary transfer, the beneficiary's interest in principal may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

(2) After an amount of principal has become due and payable to the beneficiary under the trust instrument, upon petition to the court by a judgment creditor, the court may make an order directing the trustee to satisfy the money judgment out of that principal amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal amount.

History: En. Sec. 25, Ch. 685, L. 1989.

72-33-303. Trust for support. Except as provided in 72-33-305, if the trust instrument provides that the trustee shall pay income or principal or both for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

History: En. Sec. 26, Ch. 685, L. 1989.

72-33-304. Transferee or creditor cannot compel trustee to exercise discretion — liability of trustee for payment to or for beneficiary. (1) If the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee's discretion.

(2) If the trustee has knowledge of the transfer of the beneficiary's interest or has been served with process by a judgment creditor seeking to reach the beneficiary's interest, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the beneficiary impairs the right of the transferee or creditor. This subsection does not apply

if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under 72-33-301 or 72-33-302.

(3) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(4) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal.

History: En. Sec. 27, Ch. 685, L. 1989.

72-33-305. Where trustor is beneficiary. (1) If the trustor is a beneficiary of a trust created by the trustor and the trustor's interest is subject to a provision restraining the voluntary or involuntary transfer of the trustor's interest, the restraint is invalid against transferees or creditors of the trustor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(2) If the trustor is the beneficiary of a trust created by the trustor and the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee the discretion to determine the amount of income or principal or both to be paid to or for the benefit of the trustor, a transferee or creditor of the trustor may reach the maximum amount that the trustee could pay to or for the benefit of the trustor under the trust instrument, not exceeding the amount of the trustor's proportionate contribution to the trust.

History: En. Sec. 28, Ch. 685, L. 1989.

72-33-306. Disclaimer not a transfer. A disclaimer or renunciation by a beneficiary of all or part of his interest under a trust shall not be considered a transfer under 72-33-301 or 72-33-302.

History: En. Sec. 29, Ch. 685, L. 1989.

Part 4

Modification and Termination of Trusts

72-33-401. Presumption of revocability. Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the trustor. This section applies only where the trustor is domiciled in this state when the trust is created, where the trust instrument is executed in this state, or where the trust instrument provides that the law of this state governs the trust.

History: En. Sec. 30, Ch. 685, L. 1989.

72-33-402. Method of revocation by trustor. (1) A trust that is revocable by the trustor may be revoked in whole or in part by any of the following methods:

(a) by compliance with any method of revocation provided in the trust instrument; or

(b) by a writing (other than a will) signed by the trustor and delivered to the trustee during the lifetime of the trustor. If the trust instrument explicitly makes the method of revocation provided in the trust instrument the exclusive method of revocation, the trust may not be revoked pursuant to this subsection.

(2) A trust may not be revoked by an attorney-in-fact under a power of attorney unless it is expressly permitted by the trust instrument.

(3) Nothing in this section limits the authority to modify or terminate a trust pursuant to 72-33-406 or 72-33-407 in an appropriate case.

(4) The manner of revocation of a trust revocable by the trustor that was created by an instrument executed before October 1, 1989, is governed by prior law and not by this section.

History: En. Sec. 31, Ch. 685, L. 1989.

72-33-403. Power to revoke includes power to modify. Unless the trust instrument provides otherwise, if a trust is revocable by the trustor, the trustor may modify the trust by the procedure for revocation.

History: En. Sec. 32, Ch. 685, L. 1989.

72-33-404 and 72-33-405 reserved.

72-33-406. Modification or termination of irrevocable trust by all beneficiaries. (1) Except as provided in subsection (2), if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust upon petition to the court.

(2) If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Under this section the court does not have discretion to permit termination of a trust that is subject to a valid restraint on transfer of the beneficiary's interest as provided in part 3.

History: En. Sec. 33, Ch. 685, L. 1989.

72-33-407. Modification or termination by trustor and all beneficiaries. (1) If the trustor and all beneficiaries of a trust consent, they may compel the modification or termination of the trust.

(2) If any beneficiary does not consent to the modification or termination of the trust, upon petition to the court, the other beneficiaries, with the consent of the trustor, may compel a modification or a partial termination of the trust if the interests of the beneficiaries who do not consent are not substantially impaired.

(3) If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the trustor, or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances.

History: En. Sec. 34, Ch. 685, L. 1989.

72-33-408. Guardian ad litem. For the purposes of 72-33-406 and 72-33-407, the consent of a beneficiary who is legally incapacitated, unascertained, or unborn may be given in proceedings before the court by a guardian ad litem, if it would be appropriate to do so. In this case the guardian ad litem may rely on general family benefit accruing to living members of the beneficiary's family as a basis for approving a modification or termination of the trust.

History: En. Sec. 35, Ch. 685, L. 1989.

72-33-409. No conclusive presumption of fertility. In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust pursuant to 72-33-406 or 72-33-407, the presumption of fertility is rebuttable.

History: En. Sec. 36, Ch. 685, L. 1989.

72-33-410 reserved.

72-33-411. Termination of trusts — trustee's powers on termination. (1) A trust terminates when any of the following occurs:

(a) the term of the trust expires;
(b) the trust purpose is fulfilled;
(c) the trust purpose becomes unlawful;
(d) the trust purpose becomes impossible to fulfill; or
(e) the trust is revoked.

(2) On termination of the trust, the trustee continues to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust.

History: En. Sec. 37, Ch. 685, L. 1989.

72-33-412. Trust with uneconomically low principal. (1) On petition by a trustee or beneficiary, if the court determines that the fair market value of the principal of a trust has become so low in relation to the cost of administration that continuation of the trust under its existing terms will defeat or substantially impair the accomplishment of its purposes, the court may, in its discretion and in a manner that conforms as nearly as possible to the intention of the trustor, order any of the following:

(a) termination of the trust;
(b) modification of the trust; or
(c) appointment of a new trustee.

(2) Notwithstanding subsection (1), if the trust principal does not exceed $20,000 in value, the trustee has the power to terminate the trust.

(3) The existence of a trust provision restraining transfer of the beneficiary's interest does not prevent application of this section.

History: En. Sec. 38, Ch. 685, L. 1989.

72-33-413. Modification or termination. (1) On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

(2) The court shall consider a trust provision restraining transfer of the beneficiary's interest as a factor in making its decision whether to modify or terminate the trust, but the court is not precluded from exercising its discretion to modify or terminate the trust solely because of a restraint on transfer.

History: En. Sec. 39, Ch. 685, L. 1989.

72-33-414. Disposition of property upon termination. At the termination of a trust, the trust property shall be disposed of as follows:

(1) In the case of a trust that is revoked by the trustor, as directed by the trustor.

(2) In the case of a trust that is terminated by the consent of the trustor and all beneficiaries, as agreed by the trustor and all beneficiaries.

(3) In any other case, as provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the trustor as expressed in the trust instrument. If a trust is terminated by the trustee pursuant to 72-33-412(2), the trust property shall be distributed as determined by the trustee pursuant to this subsection.

History: En. Sec. 40, Ch. 685, L. 1989.

72-33-415. Combination of similar trusts. If the terms of two or more trusts are substantially similar, on petition by a trustee or beneficiary, the court, for good cause shown, may combine the trusts if the court determines that administration as a single trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

History: En. Sec. 41, Ch. 685, L. 1989.

72-33-416. Division of trusts. On petition by a trustee or beneficiary, the court, for good cause shown, may divide a trust into two or more separate trusts, if the court determines that dividing the trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

History: En. Sec. 42, Ch. 685, L. 1989.

Part 5

Charitable Trusts

72-33-501. Charitable trust. A charitable trust, or the charitable portion of a trust, subjects the trustee to equitable duties to deal with the trust property for a charitable purpose.

History: En. Sec. 43, Ch. 685, L. 1989.

72-33-502. Charitable purposes. Charitable purposes include:

(1) the relief of poverty;

(2) the advancement of education;

(3) the advancement of religion;

(4) the promotion of health;

(5) governmental or municipal purposes; or

(6) other purposes the accomplishment of which are beneficial to the community.

History: En. Sec. 44, Ch. 685, L. 1989.

72-33-503. Enforcement of a charitable trust. The attorney general, a cotrustee, or a person who has a special interest in the enforcement of the charitable trust can maintain a suit for the enforcement of a charitable trust, but not persons who have no special interest or the trustor or his heirs or personal representative.

History: En. Sec. 45, Ch. 685, L. 1989.

72-33-504. Cy pres doctrine. If property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, or illegal to carry out the particular purpose, and if the trustor manifested a general intention to devote the property to charitable purposes, the trust need not fail. The court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the trustor.

History: En. Sec. 46, Ch. 685, L. 1989.

Part 6
Trustees

72-33-601. Acceptance of trust by trustee. (1) The person named as trustee may accept the trust, or a modification of the trust, by one of the following methods:

(a) signing the trust instrument or the trust instrument as modified, or signing a separate written acceptance; or

(b) knowingly exercising powers or performing duties under the trust instrument or the trust instrument as modified, except as provided in subsection (2).

(2) In a case where there is an immediate risk of damage to the trust property, the person named as trustee may act to preserve the trust property without accepting the trust or a modification of the trust, if within reasonable time after acting the person delivers a written rejection of the trust or the modification of the trust to the trustor or, if the trustor is dead or incompetent, to a beneficiary. This subsection does not impose a duty on the person named as trustee to act.

History: En. Sec. 47, Ch. 685, L. 1989.

72-33-602. Rejection of trust — nonliability of person who rejects trust. (1) A person named as trustee may in writing reject the trust or a modification of the trust.

(2) If the person named as trustee does not accept the trust or a modification of the trust by a method provided in 72-33-601(1) within a reasonable time after learning of being named as trustee or of the modification, the person has rejected the trust or the modification.

(3) A person named as trustee who rejects the trust or a modification of the trust is not liable with respect to the rejected trust or modification.

History: En. Sec. 48, Ch. 685, L. 1989.

72-33-603. Trustee's bond. (1) A trustee is not required to give a bond to secure performance of the trustee's duties, unless either of the following circumstances occurs:

(a) A bond is required by the trust instrument.

(b) Notwithstanding a waiver of bond in the trust instrument, a bond is found by the court to be necessary to protect the interests of beneficiaries.

(2) Notwithstanding subsection (1)(a), the court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, permit the substitution of another bond with the same or different sureties, or accept another form of security.

(3) If a bond is required, it shall be filed or served, in the amount, and with sureties and liabilities as provided in the trust instrument or as ordered by the court.

(4) Except as otherwise provided in the trust instrument or ordered by the court, the cost of the bond shall be charged against the trust.

(5) A trust company may not be required to give a bond, notwithstanding a contrary provision in the trust instrument.

History: En. Sec. 49, Ch. 685, L. 1989.

72-33-604. Certificate of trustee. On application by the trustee, the clerk of the district court shall issue a certificate that the trustee is a duly appointed and acting trustee under the trust if the court file shows the incumbency of the trustee.

History: En. Sec. 50, Ch. 685, L. 1989.

72-33-605 through 72-33-610 reserved.

72-33-611. Cotrustees. (1) Unless otherwise provided in the trust instrument, a power vested in two trustees may only be exercised by their unanimous action.

(2) Unless otherwise provided in the trust instrument, a power vested in three or more trustees may be exercised by a majority of such trustees.

History: En. Sec. 51, Ch. 685, L. 1989.

Cross-References

Duty with respect to cotrustees, 72-34-116.

Liability of dissenting cotrustee to third persons, 72-36-104.

72-33-612. Vacancy in office of cotrustee. Unless otherwise provided in the trust instrument, if a vacancy occurs in the office of a cotrustee, the remaining cotrustee or cotrustees may act for the trust as if they are the only trustees.

History: En. Sec. 52, Ch. 685, L. 1989.

72-33-613. Temporary incapacity of cotrustee. Unless otherwise provided in the trust instrument, if a cotrustee is unavailable to perform the duties of the cotrustee because of absence, illness, or other temporary incapacity, the remaining cotrustee or cotrustees may act for the trust when necessary to accomplish the purposes of the trust or to avoid irreparable injury to the trust property as if they are the only trustees.

History: En. Sec. 53, Ch. 685, L. 1989.

72-33-614 and 72-33-615 reserved.

72-33-616. Resignation of the trustee. (1) A trustee who has accepted the trust may resign only by one of the following methods:

(a) as provided in the trust instrument;

(b) in the case of a revocable trust, with the consent of the person holding the power to revoke the trust;

(c) in the case of a trust that is not revocable, with the consent of only all of the adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought; or

(d) pursuant to a court order obtained as provided in subsection (2).

(2) On petition by the trustee, the court shall accept the trustee's resignation. The court may also make any orders necessary for the preservation of the trust property, including the appointment of a receiver or a temporary trustee.

History: En. Sec. 54, Ch. 685, L. 1989.

72-33-617. Liability upon resignation. The liability for acts or omissions of a resigning trustee or of the sureties on the trustee's bond, if any, is not released or affected in any manner by the trustee's resignation.

History: En. Sec. 55, Ch. 685, L. 1989.

72-33-618. Removal of a trustee. (1) A trustee may be removed in accordance with the trust instrument or by the court on its own motion or on petition of a cotrustee or beneficiary.

(2) The grounds for removal of a trustee by the court include the following:

(a) if the trustee has committed a breach of the trust;

(b) if the trustee is insolvent or otherwise unfit to administer the trust;

(c) if hostility or lack of cooperation among cotrustees impairs the administration of the trust;

(d) if the trustee fails or declines to act; or

(e) for other good cause.

(3) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court considers necessary.

History: En. Sec. 56, Ch. 685, L. 1989.

72-33-619. Vacancy in office of trustee. There is a vacancy in the office of trustee in any of the following circumstances:

(1) The person named as trustee rejects the trust.

(2) The person named as trustee cannot be identified or does not exist.

(3) The trustee resigns or is removed.

(4) The trustee dies.

(5) A conservator or guardian of an individual trustee is appointed.

(6) A certificate of incorporation of a trust company is revoked or its powers are suspended, if the revocation or suspension is to be in effect for a period of 30 days or more.

(7) A receiver is appointed for a trust company if the appointment is not vacated within a period of 30 days.

History: En. Sec. 57, Ch. 685, L. 1989.

72-33-620. Delivery of property by former trustee upon occurrence of vacancy. When a vacancy has occurred in the office of trustee, the former trustee who holds property of the trust shall deliver the trust property to the successor trustee or a person appointed by the court to receive the property and remains responsible for the trust property until it is delivered. A trustee who has resigned or is removed has the powers reasonably necessary under the circumstances to preserve the trust property until it is delivered to the successor trustee and to perform actions necessary to complete the resigning or removed trustee's administration of the trust.

History: En. Sec. 58, Ch. 685, L. 1989.

72-33-621. Appointment of trustee to fill vacancy. (1) If the trust has no trustee or if the trust instrument requires a vacancy in the office of a cotrustee to be filled, the vacancy shall be filled as provided in this section.

(2) If the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.

(3) If the vacancy in the office of trustee is not filled as provided in subsection (2), on petition of a cotrustee or beneficiary the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to the wishes of the beneficiaries who are 14 years of age or older.

History: En. Sec. 59, Ch. 685, L. 1989.

72-33-622. Capacity of trustee. (1) The trustee must have the legal capacity to take, hold, and transfer the trust property. The trustee may be a natural person or a corporation or trust company. If the trustee is a corporation, it must be qualified to act as a trustee in this state.

(2) A beneficiary of a trust may be the trustee of the trust.

(3) The trustor of a trust may be the trustee of the trust.

History: En. Sec. 60, Ch. 685, L. 1989.

72-33-623 through 72-33-625 reserved.

72-33-626. Trustee's compensation as provided in trust instrument — different compensation. (1) Subject to subsection (2), if the trust instrument provides for the trustee's compensation, the trustee is entitled to be compensated in accordance with the trust instrument.

(2) Upon proper showing, the court may fix or allow greater or lesser compensation than could be allowed under the terms of the trust in any of the following circumstances:

(a) whenever the duties of the trustee are substantially different from those contemplated when the trust was created;

(b) whenever the compensation in accordance with the terms of the trust would be inequitable or unreasonably low or high; or

(c) in extraordinary circumstances calling for equitable relief.

(3) An order fixing or allowing greater or lesser compensation under subsection (2) applies only prospectively to actions taken in administration of the trust after the order is made.

History: En. Sec. 61, Ch. 685, L. 1989.

72-33-627. Trustee's compensation where trust silent. If the trust instrument does not specify the trustee's compensation, the trustee is entitled to reasonable compensation.

History: En. Sec. 62, Ch. 685, L. 1989.

72-33-628. Compensation for services rendered in making temporary investments. In addition to other compensation to which the trustee is entitled, the trustee is entitled to make a reasonable charge for services rendered in making temporary investments.

History: En. Sec. 63, Ch. 685, L. 1989.

72-33-629. Court determination of prospective compensation. The court may fix an amount of periodic compensation under 72-33-626 and 72-33-627 to continue for as long as the court determines is proper.

History: En. Sec. 64, Ch. 685, L. 1989.

72-33-630. Compensation of cotrustees. Unless the trust instrument otherwise provides or the trustees otherwise agree, if the trust has two or more trustees, the compensation shall be apportioned among the cotrustees according to the services rendered by them.

History: En. Sec. 65, Ch. 685, L. 1989.

72-33-631. Repayment of trustee for expenditures. A trustee is entitled to the repayment out of the trust property for the following:

(1) expenditures that were properly incurred in the administration of the trust; and

(2) to the extent that they benefited the trust, expenditures that were not properly incurred in the administration of the trust.

History: En. Sec. 66, Ch. 685, L. 1989.

72-33-632. Trustee's lien. The trustee has an equitable lien on the trust property as against the beneficiary in the amount of advances, with any interest, made for the protection of the trust, and for expenses, losses, and liabilities sustained in the administration of the trust or because of ownership or control of any trust property.

History: En. Sec. 67, Ch. 685, L. 1989.

Part 7

Beneficiaries

72-33-701. Limits on rights of beneficiary of revocable trust. Except to the extent that the trust instrument otherwise provides or where the joint action of the trustor and all beneficiaries is required, during the time that a trust is revocable and the person holding the power to revoke the trust is competent:

(1) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under chapters 33 through 36.

(2) The duties of the trustee are owed to the person holding the power to revoke.

History: En. Sec. 68, Ch. 685, L. 1989.

72-33-702. Consent by beneficiary of revocable trust. (1) In any case where the consent of a beneficiary may be given or is required to be given before an action may be taken, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, the person holding the power to revoke, and not the beneficiary, has the power to consent or withhold consent.

(2) This section does not apply where the joint consent of the trustor and all beneficiaries is required by statute.

History: En. Sec. 69, Ch. 685, L. 1989.

72-33-703. Notice to beneficiary of revocable trust. Notwithstanding any other statute, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, a notice that is to be given to a beneficiary shall be given to the person holding the power to revoke and not to the beneficiary.

History: **En. Sec. 70, Ch. 685, L. 1989.**

72-33-704. Rights of holder of power of appointment or withdrawal. The holder of a presently exercisable general power of appointment or power to withdraw property from the trust has the rights of a trustor provided by 72-33-701 through 72-33-703, inclusive, to the extent of the holder's power over the trust property.

History: **En. Sec. 71, Ch. 685, L. 1989.**

72-33-705. Notice in case involving future interest of beneficiary. (1) Subject to subsections (2) and (3), it is sufficient compliance with a requirement in chapters 33 through 36 that notice be given to a beneficiary, or to a person interested in the trust, if notice is given as follows:

(a) Whenever an interest has been limited on any future contingency to persons who will compose a certain class upon the happening of a certain event without further limitation, notice shall be given to the persons in being who would constitute the class if the event had happened immediately before the commencement of the proceedings.

(b) Whenever an interest has been limited to a living person and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are or may be the distributees, heirs, issue, or other kindred of the living persons, notice shall be given to the living person.

(c) Whenever an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the interest, or a share of the interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, notice shall be given to the person or persons in being who would take the interest upon the happening of the first of these events.

(2) If a conflict of interest involving the subject matter of the trust proceeding exists between a person to whom notice is required to be given and a person to whom notice is not otherwise required to be given under subsection (1), notice shall also be given to persons not otherwise entitled to notice under subsection (1) with respect to whom the conflict of interest exists.

(3) Nothing in this section affects any of the following:

(a) requirements for notice to:

(i) a person who has requested special notice;

(ii) a person who has filed notice of appearance; or

(iii) a particular person or entity required by statute to be given notice.

(b) Availability of a guardian ad litem pursuant to 72-35-313.

History: **En. Sec. 72, Ch. 685, L. 1989.**

CHAPTER 34

TRUST ADMINISTRATION

Part 1 — Duties of Trustees

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Part 1
Duties of Trustees

72-34-101. Duty to administer trust. On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to chapters 33 through 36.

History: En. Sec. 73, Ch. 685, L. 1989.

72-34-102. Duties of trustee of revocable trust. (1) Except as provided in subsection (2), the trustee of a revocable trust shall follow any written direction acceptable to the trustee given from time to time:

(a) by the person then having the power to revoke the trust or the part thereof with respect to which the direction is given; or

(b) by the person to whom the trustor delegates the right to direct the trustee.

(2) If a written direction given under subsection (1) would have the effect of modifying the trust, the trustee has no duty to follow the direction unless it complies with the requirements for modifying the trust.

History: En. Sec. 74, Ch. 685, L. 1989.

72-34-103. Duty of loyalty. (1) The trustee has a duty to administer the trust solely in the interest of the beneficiaries.

(2) It is not a violation of the duty provided in subsection (1) for a trustee who administers two trusts to sell, exchange, or participate in the sale or exchange of trust property between the trusts, if both of the following requirements are met:

(a) the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts; and

(b) the trustee gives to the beneficiaries of both trusts notice of all material facts related to the sale or exchange that the trustee knows or should know.

History: En. Sec. 75, Ch. 685, L. 1989.

72-34-104. Duty to deal impartially with beneficiaries. If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them.

History: En. Sec. 76, Ch. 685, L. 1989.

72-34-105. Duty to avoid conflict of interest. (1) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.

(2) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may allow the trustee to be reimbursed from trust property the amount that the trustee paid for the claim.

(3) A transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties. This presumption is a presumption affecting the burden of proof. This subsection

does not apply to the provisions of an agreement between a trustee and a beneficiary relating to the hiring or compensation of the trustee.

History: **En. Sec. 77, Ch. 685, L. 1989.**

72-34-106. Duty not to undertake adverse trust. The trustee of one trust has a duty not to knowingly become a trustee of another trust adverse in its nature to the interest of the beneficiary of the first trust, and a duty to eliminate the conflict or resign as trustee when the conflict is discovered.

History: **En. Sec. 78, Ch. 685, L. 1989.**

72-34-107. Duty to take control of and preserve trust property. The trustee has a duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.

History: **En. Sec. 79, Ch. 685, L. 1989.**

72-34-108. Duty to make trust property productive. The trustee has a duty to make the trust property productive under the circumstances and in furtherance of the purposes of the trust.

History: **En. Sec. 80, Ch. 685, L. 1989.**

72-34-109. Duty to dispose of improper investments. (1) Except as provided in subsection (2), the trustee has a duty within a reasonable time to dispose of any part of the trust property included in the trust at the time of its creation, or later acquired by or added to the trust, that would not be a proper investment for the trustee to make.

(2) Unless the trust instrument expressly provides otherwise, the trustee may, without liability, continue to hold property included in the trust at its creation or later added to the trust or acquired pursuant to proper authority, if retention is in the best interests of the trust or in furtherance of the purposes of the trust.

History: **En. Sec. 81, Ch. 685, L. 1989.**

72-34-110. Duty to keep trust property separate and identified. The trustee has a duty to do the following:

(1) to keep the trust property separate from other property not subject to the trust; and

(2) to see that the trust property is designated as property of the trust.

History: **En. Sec. 82, Ch. 685, L. 1989.**

72-34-111. Duty to enforce claims. The trustee has a duty to take reasonable steps to enforce claims that are part of the trust property.

History: **En. Sec. 83, Ch. 685, L. 1989.**

72-34-112. Duty to defend actions. The trustee has a duty to take reasonable steps to defend actions that may result in a loss to the trust.

History: **En. Sec. 84, Ch. 685, L. 1989.**

72-34-113. Duty not to delegate. (1) The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

(2) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

History: En. Sec. 85, Ch. 685, L. 1989.

72-34-114. Duty to use ordinary skill and prudence. (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

(2) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(3) The trustor may expand or restrict the standards provided in subsections (1) and (2) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

History: En. Sec. 89, Ch. 685, L. 1989.

72-34-115. Duty to use special skills. (1) The trustee has a duty to apply the full extent of the trustee's skills.

(2) If the trustor, in selecting the trustee, has relied on the trustee's representation of having special skills, the trustee is held to the standard of the skills represented.

History: En. Sec. 87, Ch. 685, L. 1989.

72-34-116. Duty with respect to cotrustees. If a trust has more than one trustee, each trustee has a duty to do the following:

(1) to participate in the administration of the trust; and

(2) to take reasonable steps to prevent a cotrustee from committing a breach of trust or to compel a cotrustee to redress a breach of trust.

History: En. Sec. 86, Ch. 685, L. 1989.

Cross-References

Cotrustees, 72-33-611.

Liability of dissenting cotrustee to third persons, 72-36-104.

72-34-117. Certain actions not violations of duties. The provision of services for compensation by a regulated financial institution or its affiliates in the ordinary course of business either to a trust of which it also acts as trustee or to a person dealing with the trust is not a violation of the duty provided in 72-34-103 or 72-34-105. For the purposes of this section, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

History: En. Sec. 88, Ch. 685, L. 1989.

72-34-118. Standard of care not affected by compensation. A trustee's standard of care and performance in administering the trust is not affected by whether or not the trustee receives any compensation.

History: En. Sec. 90, Ch. 685, L. 1989.

72-34-119 and 72-34-120 reserved.

72-34-121. Interpretation of trust terms concerning legal investments. If a trust created before, on, or after October 1, 1989, refers to "investments permissible by law for investment of trust funds", "authorized by law for investment of trust funds", "legal investments", "authorized investments", or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of their capital", or uses other words of similar meaning in defining the powers of the trustee relative to investments, such language, in the absence of other controlling or modifying provisions of the trust instrument, shall be construed as imposing the standard of care provided by 72-34-114 and authorizing any investment permitted under part 3.

History: En. Sec. 91, Ch. 685, L. 1989.

72-34-122 and 72-34-123 reserved.

72-34-124. Trustee's general duty to report information to beneficiaries. The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.

History: En. Sec. 92, Ch. 685, L. 1989.

72-34-125. Duty to report information about trust on request. Except as provided in 72-34-127, on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary's interest, including the terms of the trust that describe or affect the beneficiary's interest.

History: En. Sec. 93, Ch. 685, L. 1989.

72-34-126. Duty to provide annual statement to income beneficiaries. Except as provided in 72-34-127, the trustee shall annually mail each income beneficiary an itemized statement of all current receipts and disbursements of both principal and income.

History: En. Sec. 94, Ch. 685, L. 1989.

72-34-127. Exceptions to duty to report information and to provide annual statement. The trustee is not required to report information or to provide an annual statement to a beneficiary in any of the following circumstances:

(1) to the extent the trust instrument waives the report or annual statement;

(2) in the case of a beneficiary of a revocable trust, as provided in 72-33-701.

(3) as to a beneficiary who has waived in writing the right to a report or annual statement. A waiver of rights under this subsection may be withdrawn in writing at any time as to the most recent annual statement or future annual statements. A waiver has no effect of the beneficiary's right to petition for a report, statement, or account pursuant to 72-35-301; or

(4) if the beneficiary and the trustee are the same person.

History: En. Sec. 95, Ch. 685, L. 1989.

72-34-128. Permissive accounts. At any time during the term of the trust or upon the termination of the trust, the trustee may mail an account to trust beneficiaries. To effectively bar a beneficiary from an action against the trustee pursuant to 72-34-511, the account must contain the following information:

(1) a statement of receipts and disbursements of principal and income that have occurred since the last account;

(2) a statement of the assets and liabilities of the trust since the last account;

(3) the trustee's compensation since the last account;

(4) the agents hired by the trustee, their relationship to the trustee, if any, and their compensation since the last account;

(5) a statement that the recipient of the account may petition the court pursuant to 72-35-301 to obtain a court review of the account and of the acts of the trustee; and

(6) a statement that claims against the trustee for breach of trust may not be made after the expiration of 3 years from the date the beneficiary receives an account disclosing facts giving rise to the claim.

History: En. Sec. 96, Ch. 685, L. 1989.

72-34-129. Discretionary powers to be exercised reasonably. Except as provided in 72-34-130, a discretionary power conferred upon a trustee is not left to the trustee's arbitrary discretion, but shall be exercised reasonably.

History: En. Sec. 97, Ch. 685, L. 1989.

72-34-130. Standard for exercise of "absolute", "sole", or "uncontrolled" powers. (1) Subject to the additional requirements of subsection (2), if a trust instrument confers "absolute", "sole", or "uncontrolled" discretion on a trustee, the trustee shall act in accordance with fiduciary principles and may not act in disregard of the purposes of the trust.

(2) Notwithstanding the trustor's use of terms like "absolute", "sole", or "uncontrolled", a person who is a beneficiary of a trust and who, either individually or as trustee or cotrustee, holds a power to take or distribute income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard. In any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in his or her favor only for his or her health, education, support, or maintenance.

History: En. Sec. 98, Ch. 685, L. 1989.

Part 2

Duties of Trustees of Private Foundations, Charitable Trusts, and Split-Interest Trusts

72-34-201. Definitions. As used in this part, the following definitions apply:

(1) "Charitable trust" means a charitable trust as described in section 4947(a)(1) of the Internal Revenue Code.

(2) "Private foundation" means a private foundation as defined in section 509 of the Internal Revenue Code.

(3) "Split-interest trust" means a split-interest trust as described in section 4947(a)(2) of the Internal Revenue Code.

History: **En. Sec. 99, Ch. 685, L. 1989.**

72-34-202. Distribution under charitable trust or private foundation. During any period when a trust is considered to be a charitable trust or a private foundation, the trustee shall distribute its income for each taxable year (and principal if necessary) at a time and in a manner that will not subject the property of the trust to tax under section 4942 of the Internal Revenue Code.

History: **En. Sec. 100, Ch. 685, L. 1989.**

72-34-203. Restrictions on trustees under charitable trust, private foundations, or split-interest trust. During any period when a trust is considered to be a charitable trust, a private foundation, or a split-interest trust, the trustee may not do any of the following:

(1) engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(2) retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(3) make any investments in such manner as to subject the property of the trust to tax under section 4944 of the Internal Revenue Code; or

(4) make any taxable expenditure as defined in section 4945(d) of the Internal Revenue Code.

History: **En. Sec. 101, Ch. 685, L. 1989.**

72-34-204. Exceptions applicable to split-interest trusts. With respect to split-interest trusts:

(1) 72-34-203(2) and (3) do not apply to any trust described in section 4947(b)(3) of the Internal Revenue Code.

(2) 72-34-203 does not apply with respect to any of the following:

(a) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code;

(b) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code, if the amounts are segregated, as that term is defined in section 4947(a)(3) of the Internal Revenue Code, from amounts for which no deduction was allowable; or

(c) any amounts irrevocably transferred in trust before May 27, 1969.

History: **En. Sec. 102, Ch. 685, L. 1989.**

72-34-205. Incorporation in trust instruments. The provisions of 72-34-202 through 72-34-204 shall be considered to be contained in the instrument creating every trust to which this part applies. Any provision of the instrument inconsistent with or contrary to this part is without effect.

History: **En. Sec. 103, Ch. 685, L. 1989.**

72-34-206. Proceedings. (1) A proceeding contemplated by section 101(l)(3) of the federal Tax Reform Act of 1969 (Public Law 91-172) may be commenced pursuant to 72-35-301 by the organization involved. All specifically named beneficiaries of the organization and the attorney general shall be parties to the proceedings. Notwithstanding 72-35-101, this provision is not exclusive and does not limit any jurisdiction that otherwise exists.

(2) If an instrument creating a trust affected by this section has been recorded, a notice of pendency of judicial proceedings under this section shall be recorded in a similar manner within 10 days from the commencement of the proceedings. A duly certified copy of any final judgment or decree in the proceedings shall be similarly recorded.

History: En. Sec. 104, Ch. 685, L. 1989.

Part 3
Powers of Trustees

72-34-301. General powers of trustee. A trustee has the following powers without the need to obtain court authorization:

(1) the powers conferred by the trust instrument;

(2) except as limited in the trust instrument, the powers conferred by statute; and

(3) except as limited in the trust instrument, the power to perform any act that a trustee would perform for the purposes of the trust under the standard of care provided in 72-34-114.

History: En. Sec. 105, Ch. 685, L. 1989.

72-34-302. Power of court to relieve trustee from restrictions on powers. Sections 72-34-306 through 72-34-311, 72-34-316 through 72-34-323, 72-34-326 through 72-34-332, and 72-34-336 through 72-34-343 do not affect the power of a court to relieve a trustee from restrictions on the exercise of powers under the trust instrument.

History: En. Sec. 106, Ch. 685, L. 1989.

72-34-303. Exercise of powers subject to trustee's duties. The grant of a power to a trustee, whether by the trust instrument, by statute, or by the court, does not in itself require or permit the exercise of the power. The exercise of a power by a trustee is subject to the trustee's fiduciary duties.

History: En. Sec. 107, Ch. 685, L. 1989.

72-34-304. Application of rules governing trustees' powers. An instrument that incorporates the powers provided in former Title 72, chapter 21, ("Montana Trustees' Powers Act") shall be considered to refer to the powers provided in 72-34-306 through 72-34-311, 72-34-316 through 72-34-323, 72-34-326 through 72-34-332, and 72-34-336 through 72-34-343. For this purpose, the trustee's powers under former Title 72, chapter 21, ("Montana Trustees' Powers Act") are not diminished and the trustee is not required to obtain court approval for exercise of a power for which court approval was not required by former law.

History: En. Sec. 108, Ch. 685, L. 1989.

72-34-305 reserved.

72-34-306. Collecting and holding property. The trustee has the power to collect, hold, and retain trust property received from a trustor or any other person until, in the judgment of the trustee, disposition of the property should be made. The property may be retained even though it includes property in which the trustee is personally interested.

History: En. Sec. 109, Ch. 685, L. 1989.

72-34-307. Receiving additions to trust. The trustee has the power to accept additions to the property of the trust from a trustor or any other person.

History: En. Sec. 110, Ch. 685, L. 1989.

72-34-308. Participation in business — change in form of business. The trustee has the power to continue to participate in the operation of any business or other enterprise that is part of the trust property and may effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

History: En. Sec. 111, Ch. 685, L. 1989.

72-34-309. Investments. The trustee has the power to invest, including making those investments provided for in 32-1-420, in any kind of property, whether real, personal, or mixed.

History: En. Sec. 112, Ch. 685, L. 1989; amd. Sec. 2, Ch. 289, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 289 inserted reference to investments provided for in 32-1-420.

Cross-References

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

Montana capital companies — investment in allowed, 90-8-202.

72-34-310. Investments in obligations of United States government. In the absence of an express provision to the contrary in a trust instrument, whenever the instrument directs or permits investment in obligations of the United States government, the trustee has the power to invest in those obligations directly or in the form of securities or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, or an investment vehicle authorized for the collective investment of trust funds pursuant to section 9.18 of Title 12 of the Code of Federal Regulations, if:

(1) the portfolio of the investment company, investment trust, or investment vehicle is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(2) the investment company, investment trust, or investment vehicle takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

History: En. Sec. 113, Ch. 685, L. 1989.

72-34-311. Deposits. (1) The trustee has the power to deposit trust funds at reasonable interest with any of the following:

(a) an insured commercial or savings bank;

(b) an insured building and loan association; or

(c) an insured credit union.

(2) A trustee may deposit trust funds as described in subsection (1) in a financial institution operated by, or that is an affiliate of, the trustee. For the purpose of this subsection, "affiliate" means a corporation that directly or

indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

(3) This section does not limit the power of a trustee in a proper case to deposit trust funds in institutions as described in subsection (1) that are subject to notice or other conditions respecting withdrawal prescribed by law or governmental regulation.

(4) Nothing in this section prevents the trustee from holding an amount of trust property reasonably necessary for the orderly administration of the trust in the form of cash or in a checking account without interest.

History: En. Sec. 114, Ch. 685, L. 1989.

72-34-312 through 72-34-315 reserved.

72-34-316. Acquisition and disposition of property. The trustee has the power to acquire or dispose of property, for cash or on credit, at public or private sale, or by exchange.

History: En. Sec. 115, Ch. 685, L. 1989.

72-34-317. Management of property. The trustee has the power to manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property or any interest therein.

History: En. Sec. 116, Ch. 685, L. 1989.

72-34-318. Encumbrances. The trustee has the power to encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the trustee.

History: En. Sec. 117, Ch. 685, L. 1989.

72-34-319. Repairs and alterations of property. The trustee has the power to do any of the following:

(1) make ordinary or extraordinary repairs, alterations, improvements in buildings or other trust property;

(2) demolish any improvements; or

(3) raze existing or erect new party walls or buildings.

History: En. Sec. 118, Ch. 685, L. 1989.

72-34-320. Development of land. The trustee has the power to do any of the following:

(1) subdivide or develop land;

(2) dedicate land to public use;

(3) make or obtain the vacation of plats and adjust boundaries;

(4) adjust differences in valuation on exchange or partition by giving or receiving consideration; or

(5) dedicate easements to public use without consideration.

History: En. Sec. 119, Ch. 685, L. 1989.

72-34-321. Leases. The trustee has the power to enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust.

History: En. Sec. 120, Ch. 685, L. 1989.

72-34-322. Mineral leases. The trustee has the power to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals, and to enter into a community oil lease or a pooling or utilization agreement, and for a term within or extending beyond the term of the trust.

History: **En. Sec. 121, Ch. 685, L. 1989.**

72-34-323. Options. The trustee has the power to grant an option involving disposition of trust property or to take an option for the acquisition of any property, and an option may be granted or taken that is exercisable beyond the term of the trust.

History: **En. Sec. 122, Ch. 685, L. 1989.**

72-34-324 and 72-34-325 reserved.

72-34-326. Voting rights with respect to corporate shares, memberships, or property. With respect to any shares of stock of a domestic or foreign corporation, any membership in a nonprofit corporation, or any other property, a trustee has the power to do any of the following:

(1) vote in person and give proxies to exercise any voting rights with respect to the shares, memberships, or property;

(2) waive notice of a meeting or give consent to the holding of a meeting; or

(3) authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

History: **En. Sec. 123, Ch. 685, L. 1989.**

72-34-327. Payment of calls and assessments. The trustee has the power to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

History: **En. Sec. 124, Ch. 685, L. 1989.**

72-34-328. Stock subscriptions and conversions. The trustee has the power to sell or exercise stock subscription or conversion rights.

History: **En. Sec. 125, Ch. 685, L. 1989.**

72-34-329. Consent to change in form of business — voting trusts. The trustee has the power to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and to participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, to deposit securities with and transfer title and delegate discretions to any protective or other committee as the trustee may consider advisable.

History: **En. Sec. 126, Ch. 685, L. 1989.**

72-34-330. Holding securities in name of nominee. The trustee has the power to hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the security so held.

History: **En. Sec. 127, Ch. 685, L. 1989.**

72-34-331. Insurance. The trustee has the power to insure the property of the trust against damage or loss and to insure the trustee against liability with respect to third persons.

History: **En. Sec. 128, Ch. 685, L. 1989.**

72-34-332. Borrowing money. The trustee has the power to borrow money for any trust purpose to be repaid from trust property.

History: En. Sec. 129, Ch. 685, L. 1989.

72-34-333 through 72-34-335 reserved.

72-34-336. Payment and settlement of claims. The trustee has the power to do any of the following:

(1) pay or contest any claim;

(2) settle a claim by or against the trust by compromise, arbitration, or otherwise; or

(3) release, in whole or in part, any claim belonging to the trust.

History: En. Sec. 130, Ch. 685, L. 1989.

72-34-337. Payment of taxes, trustee's compensation, and other expenses. The trustee has the power to pay taxes, assessments, reasonable compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust.

History: En. Sec. 131, Ch. 685, L. 1989.

72-34-338. Loans to beneficiary. The trustee has the following powers:

(1) to make loans out of trust property to the beneficiary on terms and conditions that the trustee determines are fair and reasonable under the circumstances; and

(2) to guarantee loans to the beneficiary by encumbrances on trust property.

History: En. Sec. 132, Ch. 685, L. 1989.

72-34-339. Distribution to beneficiaries under legal disability. The trustee has the power to pay any sum distributable to a beneficiary, without regard to whether the beneficiary is under a legal disability, by paying the sum to the beneficiary or by paying the sum to another person for the use or benefit of the beneficiary.

History: En. Sec. 133, Ch. 685, L. 1989.

72-34-340. Nature and value of distributions. The trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata or non-pro rata.

History: En. Sec. 134, Ch. 685, L. 1989.

72-34-341. Hiring persons. The trustee has the power to hire persons, including accountants, attorneys, auditors, investment advisors, or other agents, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties.

History: En. Sec. 135, Ch. 685, L. 1989.

72-34-342. Execution and delivery of instruments. The trustee has the power to execute and deliver all instruments which are needed to accomplish or facilitate the exercise of the powers vested in the trustee.

History: En. Sec. 136, Ch. 685, L. 1989.

72-34-343. Actions and proceedings. The trustee has the power to prosecute or defend actions, claims, or proceedings for the protection of trust property and of the trustee in the performance of the trustee's duties.

History: En. Sec. 137, Ch. 685, L. 1989.

Part 4

Revised Uniform Principal and Income Act

72-34-401. Short title. This part may be cited as the "Revised Uniform Principal and Income Act".

History: En. Sec. 138, Ch. 685, L. 1989.

72-34-402. Definitions. As used in this part, the following definitions apply:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(2) "Inventory value" means the adjusted basis for federal income tax purposes.

(3) "Remainder beneficiary" means the person entitled to principal, including income which has been accumulated and added to principal.

(4) "Trustee" means the original trustee, any succeeding or added trustee, and the personal representative of a decedent's estate whenever a provision of this part is applicable to the estate.

History: En. Sec. 139, Ch. 685, L. 1989.

72-34-403. Duty of trustee as to receipts and expenditures. (1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remainder beneficiaries. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each in any of the following ways:

(a) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of this part;

(b) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of this part; or

(c) if neither subsection (a) nor (b) is applicable, in accordance with the standard of care provided in 72-34-114 and with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal.

(2) If the trust gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference that the trustee has improperly exercised such discretion arises from the fact that the trustee has made an allocation contrary to a provision of this part.

History: En. Sec. 140, Ch. 685, L. 1989.

72-34-404. Income — principal — charges. (1) Income is the return in money or property derived from the use of principal, including return received as:

(a) rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) interest on money lent, including sums received as consideration for the prepayment of principal except as provided in 72-34-408 on bond premium and bond discount;

(c) income earned during administration of a decedent's estate as provided in 72-34-406;

(d) corporate distributions as provided in 72-34-407;

(e) accrued increment on bonds or other obligations issued at discount as provided in 72-34-408;

(f) receipts from business and farming operations as provided in 72-34-409;

(g) receipts from disposition of natural resources as provided in 72-34-410 and 72-34-411; or

(h) receipts from other principal subject to depletion as provided in 72-34-412.

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainder beneficiary, while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes the following:

(a) consideration received by the trustee on the sale or other transfer of principal or a repayment of a loan or as a refund or replacement or change in the form of principal;

(b) proceeds of property taken on eminent domain proceedings;

(c) proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(d) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in 72-34-407;

(e) receipts from the disposition of corporate securities as provided in 72-34-408;

(f) royalties and other receipts from disposition of natural resources as provided in 72-34-410 and 72-34-411;

(g) receipts from other principal subject to depletion as provided in 72-34-412;

(h) any profit resulting from any change in the form of principal; or

(i) any allowances for depreciation established under 72-34-416(1)(b).

(3) After determining income and principal in accordance with the terms of the trust instrument or of this part, the trustee shall charge to income or principal the expenses and other charges as provided in 72-34-416.

History: En. Sec. 141, Ch. 685, L. 1989.

72-34-405. When right to income arises — apportionment of income. (1) An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an item of property becomes subject to the trust. In the case of an item of property becoming subject to a trust by reason of a person's death, it becomes subject to the trust as of the date of the death of the person even though there is an intervening period of administration of the person's estate.

(2) Upon property becoming subject to a trust by reason of a person's death:

(a) Receipts due but not paid at the date of death of the person are principal.

(b) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the person shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal and the balance is income.

(3) In all other cases, any receipt from income-producing property is income even though the receipt was earned or accrued in whole or in part before the date when the property became subject to the trust.

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or his or her estate, is entitled to income:

(a) undistributed on the date of termination;

(b) due but not paid to the trustee on the date of termination; and

(c) in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

(5) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

History: En. Sec. 142, Ch. 685, L. 1989.

72-34-406. Income earned during administration of decedent's estate. (1) Unless the will otherwise provides and subject to subsection (2), all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs, shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the property of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under chapters 33 and 34 and distributed as follows:

(a) to specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration;

(b) to all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration, in proportion to their respective interests in the undistributed property of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) shall be treated as income of the trust.

History: En. Sec. 143, Ch. 685, L. 1989.

72-34-407. Corporate distributions. (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right, are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to any of the following:

(a) a call of shares;

(b) a merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(c) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1) through (3), all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this part concerning the source or character of dividends or distributions of corporate assets.

History: En. Sec. 144, Ch. 685, L. 1989.

72-34-408. Bond premium and discount. (1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) for discount bonds. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

History: En. Sec. 145, Ch. 685, L. 1989.

72-34-409. Business and farming operations. (1) If a trustee uses any part of the principal in the continuance of a business of which the trustor was a sole proprietor or a partner, the net profits of the business, computed in accordance with recognized methods of accounting for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and may not be carried into any other fiscal or calendar year for purposes of calculating net income.

(2) Recognized methods of accounting for a comparable business shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

History: En. Sec. 146, Ch. 685, L. 1989.

72-34-410. Disposition of natural resources. (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subsections (1)(a) and (1)(b) shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. The receipts shall be allocated entirely to income or apportioned between income and principal as the trustee in its discretion may determine, but the amount added to principal as an allowance for depletion may not exceed the lesser of:

(i) the percentage of gross receipts allowed as a deduction for depletion in computing taxable income for federal income tax purposes or

(ii) 50% of the net receipts remaining after payment of expenses, direct and indirect, computed without allowance for depletion.

(2) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

History: En. Sec. 147, Ch. 685, L. 1989.

72-34-411. Timber. If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with 72-34-403(1)(c).

History: En. Sec. 148, Ch. 685, L. 1989.

72-34-412. Other property subject to depletion. Except as provided in 72-34-410 and 72-34-411, if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of 5% per year of its inventory value, are income, and the balance is principal.

History: En. Sec. 149, Ch. 685, L. 1989.

72-34-413 through 72-34-415 reserved.

72-34-416. Charges against income and principal. (1) The following charges shall be made against income:

(a) ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including:

(i) regularly recurring taxes assessed against any portion of the principal;

(ii) water rates;

(iii) premiums on insurance taken upon the interests of the income beneficiary, remainder beneficiary, or trustee;

(iv) interest paid by the trustee; and

(v) ordinary repairs;

(b) a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance may be made for depreciation on that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on July 1, 1983, for which the trustee was not then making an allowance for depreciation;

(c) not less than one-half of court costs, attorney fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(d) court costs, attorney fees, and fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(e) not less than one-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income, unless the court directs otherwise; and

(f) any tax levied upon receipts defined as income under part 4 or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may, by means of reserves or other reasonable means, charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) (a) The following charges shall be made against principal:

(i) trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e);

(ii) special compensation of trustees;

(iii) expenses reasonably incurred in connection with principal, court costs, and attorney fees primarily concerning matters of principal; and

(iv) trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) charges not provided for in subsection (1), including:

(i) the costs of investing and reinvesting principal;

(ii) the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal;

(iii) expenses for preparation of property for rental or sale; and

(iv) unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for depreciation out of income to the extent permitted by 72-34-409 and by subsection (1)(b) of this section;

(d) any tax levied upon profit, gain, or other receipts allocated to principal, notwithstanding denomination of the tax as an income tax by the taxing authority; and

(e) if an estate or inheritance tax is levied in respect to a trust in which both an income beneficiary and a remainder beneficiary have an interest, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under 72-34-405.

History: En. Sec. 150, Ch. 685, L. 1989.

Part 5

Liability of Trustees to Beneficiaries

72-34-501. Breach of trust. A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust.

History: En. Sec. 151, Ch. 685, L. 1989.

72-34-502. Trustee's liability to beneficiary for acts of agent. (1) Except as provided in subsection (2), the trustee is not liable to the beneficiary for the acts or omissions of an agent.

(2) The trustee is liable to the beneficiary for an act or omission of an agent employed by the trustee in the administration of the trust that would be a breach of the trust if committed by the trustee under any of the following circumstances:

(a) whenever the trustee has the power to direct the act of the agent;

(b) whenever the trustee delegates to the agent the authority to perform an act that the trustee is under a duty not to delegate;

(c) whenever the trustee does not use reasonable care in the selection of the agent or the retention of the agent selected by the trustee;

(d) whenever the trustee does not exercise proper supervision over the agent's conduct in a case where the trustee has the power to supervise the agent;

(e) whenever the trustee conceals the act of the agent; or

(f) whenever the trustee neglects to take reasonable steps to compel the agent to redress the wrong in a case where the trustee knows of the agent's acts or omissions.

(3) The liability of a trustee for acts or omissions of agents that occurred before October 1, 1989, is governed by prior law and not by this section.

History: En. Sec. 152, Ch. 685, L. 1989.

72-34-503. Trustee's liability to beneficiary for acts of cotrustee. (1) Except as provided in subsection (2), a trustee is not liable to the beneficiary for a breach of trust committed by a cotrustee.

(2) A trustee is liable to the beneficiary for a breach committed by a cotrustee under any of the following circumstances:

(a) whenever the trustee participates in a breach of trust committed by the cotrustee;

(b) whenever the trustee improperly delegates the administration of the trust to the cotrustee;

(c) whenever the trustee approves, knowingly acquiesces in, or conceals a breach of trust committed by the cotrustee;

(d) whenever the trustee negligently enables the cotrustee to commit a breach of trust; or

(e) whenever the trustee neglects to take reasonable steps to compel the cotrustee to redress a breach of trust in a case where the trustee knows or has information from which the trustee reasonably should have known of the breach.

(3) The liability of a trustee for acts or omissions of a cotrustee that occurred before October 1, 1989, is governed by prior law and not by this section.

History: En. Sec. 153, Ch. 685, L. 1989.

72-34-504. Trustee's liability to beneficiary for acts of predecessor. (1) Except as provided in subsection (2), a successor trustee is not liable to the beneficiary for a breach of trust committed by a predecessor trustee.

(2) A successor trustee is liable to the beneficiary for breach of trust involving acts or omissions of a predecessor trustee in any of the following circumstances:

(a) whenever the successor trustee knows or has information from which the successor trustee reasonably should have known of a situation constituting a breach of trust committed by the predecessor trustee, and the successor trustee improperly permits it to continue;

(b) whenever the successor trustee neglects to take reasonable steps to compel the predecessor trustee to deliver the trust property to the successor trustee; or

(c) whenever the successor trustee neglects to take reasonable steps to redress a breach of trust committed by the predecessor trustee in a case where the successor trustee knows or has information from which the successor trustee should have known of the predecessor trustee's breach.

(3) The liability of a trustee for acts or omissions of a predecessor trustee that occurred before October 1, 1989, is governed by prior law and not by this section.

History: En. Sec. 154, Ch. 685, L. 1989.

72-34-505 reserved.

72-34-506. Remedies for breach of trust. (1) If a trustee commits a breach of trust, or threatens to commit a breach of trust, a beneficiary or cotrustee of the trust may commence a proceeding for any of the following purposes that is appropriate:

(a) to compel the trustee to perform the trustee's duties;

(b) to enjoin the trustee from committing a breach of trust;

(c) to compel the trustee to redress a breach of trust by payment of money or otherwise;

(d) to appoint a receiver or temporary trustee to take possession of the trust property and administer the trust;

(e) to remove the trustee;

(f) subject to 72-36-201, to set aside acts of the trustee;

(g) to reduce or deny compensation of the trustee;

(h) subject to 72-36-201, to impose an equitable lien or a constructive trust on trust property; or

(i) subject to 72-36-201, to trace trust property that has been wrongfully disposed of and recover the property or its proceeds.

(2) The provision of remedies for breach of trust in subsection (1) does not prevent resort to any other appropriate remedy provided by statute or the common law.

History: En. Sec. 155, Ch. 685, L. 1989.

72-34-507. Remedies for breach exclusively in equity. The remedies of a beneficiary against the trustee are exclusively in equity.

History: En. Sec. 156, Ch. 685, L. 1989.

72-34-508. Measure of liability for breach of trust. (1) If the trustee commits a breach of trust, the trustee is chargeable with any of the following that is appropriate under the circumstances:

(a) any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest;

(b) any profit made by the trustee through the breach of trust, with interest; or

(c) any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust.

(2) If the trustee has acted reasonably under the circumstances as known to the trustee, the court, in its discretion, may excuse the trustee in whole or in part from liability under subsection (1) if it would be equitable to do so.

History: En. Sec. 157, Ch. 685, L. 1989.

72-34-509. Measure of liability for interest. If the trustee is liable for interest pursuant to 72-34-508, the trustee is liable for the greater of the following amounts:

(1) the amount of interest that accrues at the legal rate on judgments; or

(2) the amount of interest actually received.

History: En. Sec. 158, Ch. 685, L. 1989.

72-34-510 reserved.

72-34-511. Limitations on proceedings against trustee. (1) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise:

(a) If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after receipt of the account or report. An account or report adequately discloses existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into the existence of the claim.

(b) If an interim or final account or other report does not adequately disclose the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after the beneficiary discovered, or reasonably should have discovered, the existence of the claim.

(2) For the purpose of subsection (1), a beneficiary is considered to have received an account or report, as follows:

(a) in the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally;

(b) in the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the person's legal representative, including a guardian ad litem or other person appointed for this purpose; or

(c) in the case of a minor, if it is received by the minor's guardian or, if the minor does not have a guardian, if it is received by the minor's parent so long as the parent does not have a conflict of interest.

(3) The limitations period applicable to actions by a beneficiary against a trustee on a claim that arose before October 1, 1989, is governed by this section, except that a claim arising before October 1, 1989, is not barred by this section until October 1, 1990.

History: En. Sec. 159, Ch. 685, L. 1989.

72-34-512. Exculpation of trustee. (1) Except as provided in subsection (2), the trustee can be relieved of liability for breach of trust by provisions in the trust instrument.

(2) A provision in the trust instrument is not effective to relieve the trustee of liability:

(a) for breach of trust committed intentionally, with gross negligence, or with reckless indifference to the interest of the beneficiary; or

(b) for any profit that the trustee derives from a breach of trust.

History: En. Sec. 160, Ch. 685, L. 1989.

72-34-513. Nonliability for following instructions under revocable trust. (1) Notwithstanding 72-34-512, a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted pursuant to written directions from the person holding the power to revoke, including a person to whom the power to direct the trustee is delegated.

(2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the beneficiary in that part of the trust property.

History: En. Sec. 161, Ch. 685, L. 1989.

72-34-514. Consent of beneficiary to relieve trustee of liability for breach of trust. (1) Except as provided in subsections (2) and (3), a beneficiary may not hold the trustee liable for an act or omission of the trustee as a breach of trust if the beneficiary consented to the act or omission before or at the time of the act or omission.

(2) The consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of the consent or of the act or omission;

(b) whenever the beneficiary at the time consent was given did not know of his rights and of the material facts that the trustee knew or should have known and that the trustee did not reasonably believe that the beneficiary knew; or

(c) whenever the consent of the beneficiary was induced by improper conduct of the trustee.

(3) Whenever the trustee has an interest in the transaction adverse to the interest of the beneficiary, the consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust under any of the circumstances described in subsection (2) or whenever the transaction to which the beneficiary consented was not fair and reasonable to the beneficiary.

History: En. Sec. 162, Ch. 685, L. 1989.

72-34-515. Discharge of trustee's liability by release or contract. (1) Except as provided in subsection (2), a beneficiary may be precluded from holding the trustee liable for a breach of trust by the beneficiary's release or contract effective to discharge the trustee's liability to the beneficiary for that breach.

(2) A release or contract is not effective to discharge the trustee's liability for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of making the release or contract;

(b) whenever the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) whenever the release or contract of the beneficiary was induced by improper conduct of the trustee; or

(d) whenever the transaction involved a bargain with the trustee that was not fair and reasonable.

History: En. Sec. 163, Ch. 685, L. 1989.

72-34-516. Discharge of trustee's liability by subsequent affirmance. (1) Except as provided in subsection (2), if the trustee, in breach of trust, enters into a transaction that the beneficiary may at his option reject or affirm, and the beneficiary affirms the transaction, the beneficiary may not thereafter reject it and hold the trustee liable for any loss occurring after the trustee entered into the transaction.

(2) The affirmance of a transaction by the beneficiary does not preclude the beneficiary from holding a trustee liable for a breach of trust if, at the time of the affirmance, any of the following circumstances existed:

(a) the beneficiary was under an incapacity;

(b) the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) the affirmance was induced by improper conduct of the trustee; or

(d) the transaction involved a bargain with the trustee that was not fair and reasonable.

History: En. Sec. 164, Ch. 685, L. 1989.

CHAPTER 35

JUDICIAL PROCEEDINGS CONCERNING TRUSTS

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72-35-406. Manner of transfer — discharge of trustee.

Part 5 — Transfer of Trust From Another Jurisdiction

72-35-501. Application.
72-35-502. Transfer of place of administration or property to Montana.
72-35-503. Venue.
72-35-504. Contents of petition.
72-35-505. Notice and hearing.

72-35-506. Order accepting transfer and appointing trustee.
72-35-507. Conditional order accepting transfer.
72-35-508. Administration of transferred trust.

Part 1
Jurisdiction and Venue

72-35-101. Subject matter jurisdiction. (1) The district court having jurisdiction over the trust pursuant to chapters 33 through 36 has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(2) The district court having jurisdiction over the trust pursuant to chapters 33 through 36 has concurrent jurisdiction of the following:

(a) actions and proceedings to determine the existence of trusts;

(b) actions and proceedings by or against creditors or debtors of trusts; and

(c) other actions and proceedings involving trustees and third persons.

History: En. Sec. 165, Ch. 685, L. 1989.

Cross-References

Probate matters — exclusive jurisdiction of court, 72-3-111.

72-35-102. Full-power court. In proceedings concerning the internal affairs of trusts commenced pursuant to chapters 33 through 36, the court has all the powers of a district court exercising its general jurisdiction.

History: En. Sec. 166, Ch. 685, L. 1989.

72-35-103. Principal place of administration of trust. (1) The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.

(2) If the principal place of administration of the trust cannot be determined under subsection (1), it shall be determined as follows:

(a) if the trust has a single trustee, the principal place of administration of the trust is the trustee's residence or usual place of business; or

(b) if the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the cotrustees, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees.

History: En. Sec. 167, Ch. 685, L. 1989.

72-35-104. Jurisdiction over trustees and beneficiaries. Subject to 72-35-105:

(1) by accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under chapters 33 through 36; and

(2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under chapters 33 through 36.

History: En. Sec. 168, Ch. 685, L. 1989.

72-35-105. Basis of jurisdiction over trust, trust property, and trust parties. The court may exercise jurisdiction in proceedings under this division on any basis permitted by Rule 4 of the Rules of Civil Procedure.

History: En. Sec. 169, Ch. 685, L. 1989.

72-35-106. Venue. (1) The proper county for commencement of a proceeding pursuant to parts 1 and 2 is either of the following:

(a) in the case of a living trust, the county where the principal place of administration of the trust is located; or

(b) in the case of a testamentary trust, either the county where the decedent's estate is administered or where the principal place of administration of the trust is located.

(2) If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.

(3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of a proceeding pursuant to chapters 33 through 36 is determined by the rules applicable to civil actions generally.

History: En. Sec. 170, Ch. 685, L. 1989.

72-35-107. Jury trial. There is no right to a jury trial in proceedings under chapters 33 through 36 concerning the internal affairs of trusts.

History: En. Sec. 171, Ch. 685, L. 1989.

Part 2
Notice

72-35-201. Application of part. This part applies to notice in proceedings commenced pursuant to chapters 33 through 36 or notice otherwise required or permitted by chapters 33 through 36.

History: En. Sec. 172, Ch. 685, L. 1989.

72-35-202. Manner of mailing — when mailing complete. (1) If a notice or other paper is required or permitted to be mailed, it shall be sent by first-class mail.

(2) Mailing is complete when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

History: En. Sec. 173, Ch. 685, L. 1989.

72-35-203. Personal delivery instead of mailing. If a notice or other paper is required or permitted to be mailed, it may be delivered personally to the person to whom it is required or permitted to be mailed.

History: En. Sec. 174, Ch. 685, L. 1989.

72-35-204 and 72-35-205 reserved.

72-35-206. Proof of giving notice — conclusiveness of order. (1) Proof of the giving of notice shall be made at or before the hearing to the satisfaction of the court.

(2) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived, the court shall so find in its order. When the order becomes final, it is conclusive on all persons, whether or not in being.

History: En. Sec. 175, Ch. 685, L. 1989.

72-35-207. Additional notice. (1) The court may, on its own motion or on motion of a trustee or other person interested in the trust, require that further or additional notice be given at any state of the proceeding. The court may prescribe the form and method of the notice to be given.

(2) A petitioner or other person required to give notice may cause notice to be given to any person interested in the trust without the need for a court order.

History: En. Sec. 176, Ch. 685, L. 1989.

72-35-208. Shortening time. The court may for good cause shorten the time for giving a notice.

History: En. Sec. 177, Ch. 685, L. 1989.

72-35-209. Notice of postponed hearings. The court may continue or postpone any hearing, from time to time, in the interest of justice, and no further notice of the continued or postponed hearing is required unless otherwise ordered by the court.

History: En. Sec. 178, Ch. 685, L. 1989.

Part 3

Proceedings Concerning Trusts

72-35-301. Petitioners — grounds for petition. (1) Except as provided in 72-33-701, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(2) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(a) determining questions of construction of a trust instrument;

(b) determining the existence or nonexistence of any immunity, power, privilege, duty, or right;

(c) determining the validity of a trust provision;

(d) ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument;

(e) settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers;

(f) instructing the trustee;

(g) compelling the trustee to report information about the trust or account to the beneficiary, if:

(i) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary; and

(ii) no report or account has been made within 6 months preceding the request;

(h) granting powers to the trustee;

(i) fixing or allowing payment of the trustee's compensation;

(j) appointing or removing a trustee;

(k) accepting the resignation of a trustee;

(l) compelling redress of a breach of the trust by any available remedy;

(m) approving or directing the modification or termination of the trust;

(n) approving or directing the combination or division of trusts;

(o) amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest;

(p) authorizing or directing transfer of a trust or trust property to or from another jurisdiction;

(q) directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another;

(r) approving removal of a testamentary trust from continuing court jurisdiction; or

(s) reforming or excusing compliance with the governing instrument of an organization pursuant to 72-34-206.

History: En. Sec. 179, Ch. 685, L. 1989.

Cross-References

Burdens in contested cases, 72-3-310.

72-35-302. Commencement of proceeding. (1) A proceeding under this chapter is commenced by filing a verified petition stating facts showing that the petition is authorized under this chapter and the grounds of the petition.

(2) When a petition that requires a hearing is filed with the court clerk, the clerk shall set the matter for hearing.

History: En. Sec. 180, Ch. 685, L. 1989.

72-35-303. Dismissal of petition. The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary.

History: En. Sec. 181, Ch. 685, L. 1989.

72-35-304 and 72-35-305 reserved.

72-35-306. Notice. At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of hearing to be mailed to any of the following persons who are not petitioners:

(1) all trustees;

(2) all beneficiaries who are entitled to notice; and

(3) the attorney general, if the petition is related to a charitable trust subject to the jurisdiction of the attorney general, unless the attorney general waives notice.

History: En. Sec. 182, Ch. 685, L. 1989.

72-35-307. Request for special notice. (1) If proceedings involving a trust are pending, a beneficiary of the trust may, in person or by attorney, serve on the trustee or the trustee's attorney and file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires special notice of the filing of petitions in the proceeding relating to any or all of the purposes described in 72-35-301 and giving an address for receiving notice by mail. Proof of service of the request on the trustee shall be filed with the court clerk when the request is filed.

(2) Except as provided in subsection (3), after serving and filing a request and proof of service pursuant to subsection (1), the beneficiary is entitled to notice pursuant to 72-35-306.

(3) A request for special notice made by a beneficiary whose right to notice is restricted by 72-33-703 is not effective.

History: **En. Sec. 183, Ch. 685, L. 1989.**

72-35-308. Request for copy of petition. If a trustee or beneficiary has served and filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel in connection with a particular petition and proceeding or a written request for a copy of the petition, and has given an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall cause a copy of the petition to be mailed to that person within 5 days after service of the notice of appearance or receipt of the request.

History: **En. Sec. 184, Ch. 685, L. 1989.**

72-35-309 and 72-35-310 reserved.

72-35-311. Authority to make necessary orders — temporary trustee. The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

History: **En. Sec. 185, Ch. 685, L. 1989.**

72-35-312. Appeal. An appeal may be taken from the grant or denial of any final order made under this chapter, except the following:

(1) compelling the trustee to submit an account or report acts as trustee to a beneficiary pursuant to 72-35-301(2)(g);

(2) accepting the resignation of a trustee pursuant to 72-35-301(2)(k); or

(3) approving removal of a testamentary trust from continuing court jurisdiction pursuant to 72-35-301(2)(r).

History: **En. Sec. 186, Ch. 685, L. 1989.**

72-35-313. Appointment of guardian ad litem. (1) The court may, on its own motion or on request of a trustee or other person interested in the trust, appoint a guardian ad litem at any stage of a proceeding concerning the trust to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

(a) a minor;

(b) an incapacitated person;

(c) an unborn person;

(d) an unascertained person;

(e) a person whose identity or address is unknown; or

(f) a designated class of persons who are not ascertained or are not in being.

(2) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(3) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of trust property or by the petitioner.

(4) If no guardian ad litem is appointed, an unborn person or an unascertained person is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

History: En. Sec. 187, Ch. 685, L. 1989.

72-35-314. Intermittent judicial intervention in trust administration. The administration of trusts is intended to proceed expeditiously and free of judicial intervention, subject to the jurisdiction of the court.

History: En. Sec. 188, Ch. 685, L. 1989.

72-35-315. Enforcement of beneficiary's rights under charitable trust by attorney general. In a case involving a charitable trust subject to the jurisdiction of the attorney general, the attorney general may petition under this chapter.

History: En. Sec. 189, Ch. 685, L. 1989.

Part 4

Transfer of Trust to Another Jurisdiction

72-35-401. Application of part. (1) This part applies to all of the following:

(a) a trust that is subject to chapters 33 through 36; and

(b) any other trust to which the provisions of this chapter are made applicable by statute or trust instrument.

(2) This part does not prevent the transfer of the place of administration of a trust or of trust property to another jurisdiction by any other available means.

History: En. Sec. 190, Ch. 685, L. 1989.

72-35-402. Transfer of place of administration or property from Montana. (1) The court may make an order for the transfer of the place of administration of a trust or the transfer of some or all of the trust property to a jurisdiction outside this state as provided in this chapter.

(2) Except as otherwise provided in this part, proceedings under this chapter are governed by this part.

History: En. Sec. 191, Ch. 685, L. 1989.

72-35-403. Contents of petition. The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in this state; and

(b) the trustee, including any domiciliary trustee, who will administer the trust or trust property in the other jurisdiction;

(2) the names, ages, and places of residence of the living beneficiaries, as far as known to the petitioner;

(3) whether the trustee who will administer the trust in the other jurisdiction has agreed to accept the trust. If so, the acceptance or a copy shall be attached as an exhibit to the petition or otherwise filed with the court;

(4) a general statement of the qualifications of the trustee who will administer the trust in the other jurisdiction and the amount of fiduciary bond, if any. If the trustee is an individual, the statement shall include the trustee's age;

(5) a general statement of the nature and value of the property of any trust of the same trustor being administered in the other jurisdiction by the trustee who will administer the trust in the other jurisdiction;

(6) the name of the court, if any, having jurisdiction of the trustee in the other jurisdiction or of its accounts or in which a proceeding may be had with respect to administration of the trust or the trustee's accounts;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred;

(8) whether there is any pending civil action in this state against the trustee arising out of the administration of the trust sought to be transferred; and

(9) a statement of the reasons for the transfer.

History: En. Sec. 192, Ch. 685, L. 1989.

72-35-404. Notice and hearing. (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

History: En. Sec. 193, Ch. 685, L. 1989.

72-35-405. Order granting transfer. The court may, in its discretion, grant the petition and order the trustee to transfer the trust property or to transfer the place of administration of the trust to the other jurisdiction if, after hearing, all of the following appear to the court:

(1) the transfer of the trust property to a trustee in another jurisdiction, or the transfer of the place of administration of the trust to another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(2) the transfer will not violate the trust instrument; and

(3) any new trustee to whom the trust property is to be transferred is qualified, willing, and able to administer the trust or trust property under the trust instrument.

History: En. Sec. 194, Ch. 685, L. 1989.

72-35-406. Manner of transfer — discharge of trustee. If a transfer is ordered under this chapter, the court may direct the manner of transfer and impose terms and conditions as may be just, including, but not limited to, a requirement for the substitution of a successor trustee in any pending litigation in this state. The delivery of property in accordance with the order of the court is a discharge of the trustee in relation to all property embraced in the order.

History: En. Sec. 195, Ch. 685, L. 1989.

Part 5

Transfer of Trust From Another Jurisdiction

72-35-501. Application. (1) This part applies to a trust, or portion thereof, administered in a jurisdiction outside this state.

(2) This part does not prevent the transfer of the place of administration of a trust or trust property to this state by any other available means.

History: En. Sec. 196, Ch. 685, L. 1989.

72-35-502. Transfer of place of administration or property to Montana. (1) The court may make an order accepting the transfer of the place of administration of a trust from another jurisdiction to this state or the transfer of some or all of the trust property in another jurisdiction to a trustee in this state as provided in this part.

(2) Except as otherwise provided in this part, proceedings under this part are governed by this chapter.

History: En. Sec. 197, Ch. 685, L. 1989.

72-35-503. Venue. (1) If the petition requests that a resident of this state be appointed trustee, the petition shall be filed in the court of the county where the proposed principal place of administration of the trust pursuant to 72-35-103 is located.

(2) If the petition requests that only a nonresident of this state be appointed trustee, the petition shall be filed in the court of the county where either:

(a) any beneficiary resides; or

(b) a substantial portion of the trust property to be transferred is located or will be located.

History: En. Sec. 198, Ch. 685, L. 1989.

72-35-504. Contents of petition. The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in the other jurisdiction; and

(b) the proposed trustee to whom administration of the trust or trust property will be transferred;

(2) the names, ages, and places of residence of all living beneficiaries, as far as known to the petitioner;

(3) whether administration of the trust has been subject to supervision in a jurisdiction outside this state. If so, the petition shall state whether a petition or appropriate request for transfer of place of administration of the trust or trust property to this state has been filed, if necessary, with the court in the other jurisdiction, and the status of the petition or request.

(4) whether the trustee proposed to administer the trust in this state has agreed to accept the trust in this state. If the trustee has agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(5) a general statement of the qualifications of the trustee proposed to administer the trust in this state and the amount of any bond to be requested. If the trustee is an individual, the statement shall include the trustee's age.

(6) a copy of the trust instrument or a statement of the terms of the trust instrument in effect at the time the petition is filed, including all amendments thereto;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred; and

(8) a statement of the reasons for the transfer.

History: En. Sec. 199, Ch. 685, L. 1989.

72-35-505. Notice and hearing. (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

History: En. Sec. 200, Ch. 685, L. 1989.

72-35-506. Order accepting transfer and appointing trustee. (1) The court may, in its discretion, grant the petition and issue an order accepting transfer of trust property or the place of administration of the trust to this state and appoint a trustee to administer the trust in this state, if, after hearing, all of the following appear to the court:

(a) the transfer of the trust property to a trustee in this state, or the transfer of the place of administration of the trust to this state, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(b) the transfer will not violate the trust instrument;

(c) the trustee appointed by the court to administer the trust in this state, and to whom the trust property is to be transferred, is qualified, willing, and able to administer the trust or trust property under the trust instrument; and

(d) the proper court in the other jurisdiction has approved the transfer if approval is necessary under the law of the other jurisdiction.

(2) If the court grants the petition under subsection (1), the court shall require the trustee to give a bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in 72-33-603.

History: En. Sec. 201, Ch. 685, L. 1989.

72-35-507. Conditional order accepting transfer. If appropriate to facilitate transfer of the trust property or the place of administration of a trust to this state, the court may issue a conditional order appointing a trustee to administer the trust in this state and indicating that transfer to this state will be accepted if transfer is approved by the proper court of the other jurisdiction.

History: En. Sec. 202, Ch. 685, L. 1989.

72-35-508. Administration of transferred trust. A trust transferred to this state pursuant to this chapter shall be administered in the same manner as a trust of that type created in this state.

History: En. Sec. 203, Ch. 685, L. 1989.

CHAPTER 36

RIGHTS OF THIRD PERSONS

Part 1 — Liability of Trustee to Third Persons

72-36-101. Personal liability of trustee to third persons on contracts.
72-36-102. Personal liability of trustee arising from ownership or control of trust estate.
72-36-103. Personal liability of trustee for torts.
72-36-104. Liability of dissenting cotrustee to third persons.
72-36-105. Assertion of claims against trust.
72-36-106. Liability as between trustee and trust estate.

Part 2 — Protection of Third Persons

72-36-201. Protection of third person dealing with trustee.
72-36-202. Application of property delivered to trustee by third person.
72-36-203. Protection of third person dealing with former trustee.
72-36-204 and 72-36-205 reserved.
72-36-206. Effects on real property transactions.

Part 3 — Rights of Creditors of Trustor

72-36-301. Creditor's rights against revocable trust during trustor's lifetime.
72-36-302. Creditor's rights against revocable trust after trustor's death.

Part 1

Liability of Trustee to Third Persons

72-36-101. Personal liability of trustee to third persons on contracts. (1) Unless otherwise provided in the contract or in chapter 35, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust unless the trustee fails to reveal the trustee's representative capacity or identify the trust in the contract.

(2) The personal liability of a trustee on a contract entered into before October 1, 1989, is governed by prior law and not by this section.

History: En. Sec. 204, Ch. 685, L. 1989.

72-36-102. Personal liability of trustee arising from ownership or control of trust estate. A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee is personally at fault.

History: En. Sec. 205, Ch. 685, L. 1989.

72-36-103. Personal liability of trustee for torts. A trustee is personally liable for torts committed in the course of administration of the trust only if the trustee is personally at fault.

History: En. Sec. 206, Ch. 685, L. 1989.

72-36-104. Liability of dissenting cotrustee to third persons. (1) A cotrustee who does not join in exercising a power held by three or more cotrustees is not liable to third persons for the consequences of the exercise of the power.

(2) A dissenting cotrustee who joins in an action at the direction of the majority cotrustees is not liable to third persons for the action if the dissenting cotrustee expresses the dissent in writing to any other cotrustee at or before the time the action is taken.

(3) This section does not excuse a cotrustee from liability for failure to discharge the cotrustee's duties as a trustee.

History: En. Sec. 207, Ch. 685, L. 1989.

Cross-References

Cotrustees, 72-33-611.

Duty with respect to cotrustees, 72-34-116.

72-36-105. Assertion of claims against trust. A claim based on a contract entered into by a trustee in the trustee's representative capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administration of the trust may be asserted against the trust by proceeding against the trustee in the trustee's representative capacity, whether or not the trustee is personally liable on the claim.

History: En. Sec. 208, Ch. 685, L. 1989.

72-36-106. Liability as between trustee and trust estate. The question of liability as between the trust estate and the trustee personally may be determined in a proceeding under 72-35-301.

History: En. Sec. 209, Ch. 685, L. 1989.

Part 2

Protection of Third Persons

72-36-201. Protection of third person dealing with trustee. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, if the third person acts for a valuable consideration and without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them:

(1) the third person is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise; and

(2) the third person is fully protected in dealing with or assisting the trustee just as if the trustee has and is properly exercising the power the trustee purports to exercise.

History: En. Sec. 210, Ch. 685, L. 1989.

72-36-202. Application of property delivered to trustee by third person. A third person is not bound to ensure the proper application of trust property paid or delivered to the trustee.

History: En. Sec. 211, Ch. 685, L. 1989.

72-36-203. Protection of third person dealing with former trustee. If a third person acting for a valuable consideration enters into a transaction with a former trustee without knowledge that the person is no longer a trustee, the third person is fully protected just as if the former trustee were still a trustee.

History: En. Sec. 212, Ch. 685, L. 1989.

72-36-204 and 72-36-205 reserved.

72-36-206. Effects on real property transactions. (1) This section relates only to conveyances of real property to or from a trust, and supplements, but does not modify other substantive provisions of chapters 33 through 36 relating to the creation or validity of trusts.

(2) Except as otherwise provided in chapters 33 through 36, a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in chapters 33 through 36.

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance must be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration, despite any valid trust which may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument (or portion thereof, or abstract thereof) recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee cannot limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument (or portion thereof or abstract thereof) which is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee (or from his successor trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of any successor trustee may be established by a recorded affidavit of the successor trustee specifying the successor trustee's name and address and the date and circumstances of succession, and confirming that the successor trustee is currently lawfully serving in that capacity.

(7) In an action or proceeding by a third person involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries, shall be considered the only necessary representative of the trust and of all persons with an interest in the trust. A judgment is binding upon and conclusive against the trust and all persons interested in the trust as to all matters finally adjudicated in the judgment.

(8) The designation of the name of a trust in a recorded conveyance vests the estate in the trustee of the trust. A subsequent conveyance may be made by the trustee. The identity of a party serving as trustee may be established by a recorded affidavit of the party or by other recorded instrument, specifying the trustee's name and address and confirming that the party is currently serving as the trustee.

History: En. Sec. 213, Ch. 685, L. 1989; amd. Sec. 2, Ch. 688, L. 1991; amd. Sec. 82, Ch. 494, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 494 at end of (1) deleted "This section does not affect conveyances recorded prior to October 1, 1989"; and made minor changes in style.

Retroactive Applicability: Section 135, Ch. 494, L. 1993, provided: "The amendment to 72-36-206(1) applies retroactively, within the meaning of 1-2-109, to conveyances recorded on or before October 1, 1989. The amendment also applies to conveyances recorded after October 1, 1989."

Part 3

Rights of Creditors of Trustor

72-36-301. Creditor's rights against revocable trust during trustor's lifetime. If the trustor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the trustor to the extent of the power of revocation during the lifetime of the trustor.

History: En. Sec. 214, Ch. 685, L. 1989.

72-36-302. Creditor's rights against revocable trust after trustor's death. Upon the death of a trustor who had retained the power to revoke the trust in whole or in part, the property that was subject to the power of revocation at the time of the trustor's death is subject to the claims of creditors of the decedent trustor's estate and to the expenses of administration of the estate to the extent that the decedent trustor's estate is inadequate to satisfy those claims and expenses.

History: En. Sec. 215, Ch. 685, L. 1989.

CHAPTER 37

FUNERAL PLAN TRUSTS

Part 1 — General Provisions

72-37-101. Contract for prearranged funeral plan or related services — trust required — interest — exception.
72-37-102. Deposit of money — trust fund.
72-37-103. Report of institution holding deposited money.
72-37-104. Penalty.

Part 1
General Provisions

Part Cross-References
Deceptive practices, 45-6-317.
Deceptive business practices, 45-6-318.

72-37-101. Contract for prearranged funeral plan or related services — trust required — interest — exception. (1) In all cases when prior to his death a person or someone in his behalf makes a contract for the final disposition of his body under which contract, pursuant to a prearranged funeral plan, personal property will be delivered upon his death or the professional services of a funeral director, embalmer, cemetery firm, or mausoleum-columbarium corporation will then be furnished, all money paid under such contract shall be held in trust for the purpose for which it was paid until the obligation is fulfilled according to its terms or, by mutual consent of both parties to the contract, said money is refunded to the proper party.

(2) Accruals of interest upon this money are subject to this same trust.

(3) Such a trust is not necessary for that part of the contract that involves the sale of a cemetery lot if title is passed at the time the cemetery firm receives payment for the cemetery lot.

History: En. Sec. 1, Ch. 232, L. 1953; amd. Sec. 1, Ch. 454, L. 1977; R.C.M. 1947, 86-701; Sec. 72-27-201, MCA 1987; redes. 72-37-101 by Code Commissioner, 1989.

72-37-102. Deposit of money — trust fund. (1) Within 30 days after receipt, the party to the contract holding said money in trust according to 72-37-101 shall deposit said money in a banking institution or invest said money in the stock of a savings or building and loan association organized under the laws of the state of Montana or of the United States of America and having its principal place of business in the state, the deposits of which banking institution or the stock liability of which savings or building and loan association are insured by an instrumentality of the federal government.

(2) Said deposits or investments shall be and constitute a trust fund for the benefit of the person who has contracted for such property and services upon his death. Such money shall be deposited in a separate account in the name of the depositor as trustee for the person who has contracted for such property and services upon his death.

History: En. Sec. 2, Ch. 232, L. 1953; R.C.M. 1947, 86-702; Sec. 72-27-202, MCA 1987; redes. 72-37-102 by Code Commissioner, 1989.

72-37-103. Report of institution holding deposited money. A banking institution or savings or building and loan association receiving money in trust under 72-37-102 shall report to the department of commerce before February 1 of each year all amounts received and held in trust. This report shall show the name and address of each trustee and cestui que trust, the principal amount remaining, and the interest or dividends paid on each such account.

History: En. Sec. 3, Ch. 232, L. 1953; amd. Sec. 144, Ch. 431, L. 1975; R.C.M. 1947, 86-703; amd. Sec. 2, Ch. 274, L. 1981; Sec. 72-27-203, MCA 1987; redes. 72-37-103 by Code Commissioner, 1989.

TITLES 73 AND 74

RESERVED

TITLE 75

ENVIRONMENTAL PROTECTION

Ch.
1. Environmental Policy and Protection Generally.
2. Air Quality.
3. Nuclear Regulation.
Chapter 4 reserved.
5. Water Quality.
6. Public Water Supplies, Distribution, and Treatment.
7. Aquatic Ecosystem Protections.
Chapters 8 and 9 reserved.
10. Waste and Litter Control.
11. Underground Storage Tanks.
Chapters 12 through 14 reserved.
15. Landscape Management.
16. Transboundary Pollution.
Chapters 17 through 19 reserved.
20. Major Facility Siting.

CHAPTER 1

ENVIRONMENTAL POLICY AND PROTECTION GENERALLY

Part 1 — General Provisions

75-1-101. Short title.
75-1-102. Purpose.
75-1-103. Policy.
75-1-104. Specific statutory obligations unimpaired.
75-1-105. Policies and goals supplementary.

Part 2 — Environmental Impact Statements

75-1-201. General directions — environmental impact statements.
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Part 3 — Environmental Quality Council

75-1-301. Definition of council.
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75-1-321. Appointment and qualifications of executive director.
75-1-322. Term and removal of executive director.
75-1-323. Appointment of employees.
75-1-324. Duties of executive director and staff.

Parts 4 through 10 reserved

Part 11 — Environmental Contingency Grant Program

75-1-1101. Environmental contingency account objectives.
75-1-1102. Repealed.
75-1-1103 through 75-1-1110 reserved.
75-1-1111. Repealed.
75-1-1112. Repealed.

Chapter Cross-References

Beauty of the state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Agricultural chemical ground water protection, Title 80, ch. 15.

State policy of consistency and continuity in the adoption and application of environmental rules, 90-1-101.

Part 1
General Provisions

Part Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

75-1-101. Short title. Parts 1 through 3 may be cited as the "Montana Environmental Policy Act".

History: En. Sec. 1, Ch. 238, L. 1971; R.C.M. 1947, 69-6501.

Cross-References

State policy of consistency and continuity in the adoption and application of environmental rules, 90-1-101.

75-1-102. Purpose. The purpose of parts 1 through 3 is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

History: En. Sec. 2, Ch. 238, L. 1971; R.C.M. 1947, 69-6502.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Department of Public Service Regulation, 2-15-2601.

75-1-103. Policy. (1) The legislature, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government and local governments and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources to the end that the state may:

(a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) assure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(e) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(f) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person shall be entitled to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

History: En. Sec. 3, Ch. 238, L. 1971; R.C.M. 1947, 69-6503.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Comments of historic preservation officer, 22-3-433.

Renewable resource development, Title 90, ch. 2.

75-1-104. Specific statutory obligations unimpaired. Nothing in 75-1-103 or 75-1-201 shall in any way affect the specific statutory obligations of any agency of the state to:

(1) comply with criteria or standards of environmental quality;

(2) coordinate or consult with any other state or federal agency; or

(3) act or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

History: En. Sec. 6, Ch. 238, L. 1971; R.C.M. 1947, 69-6506.

75-1-105. Policies and goals supplementary. The policies and goals set forth in parts 1 through 3 are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

History: En. Sec. 7, Ch. 238, L. 1971; R.C.M. 1947, 69-6507.

Part 2

Environmental Impact Statements

75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except as provided in subsection (2), shall:

(i) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(ii) identify and develop methods and procedures which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(iii) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(C) alternatives to the proposed action;

(D) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(E) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(iv) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(v) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(vii) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(viii) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies which are authorized to develop and enforce environmental standards shall be made available to the governor, the environmental quality council, and the public and shall accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement, but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major action of state government as that term is used in subsection (1)(b)(iii).

(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31, 1989, that must include but not be limited to:

(i) such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;

(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the environment and renewable resources of the ecosystem may be returned to either conditions similar to those existing before drilling or production occurs or conditions that reflect a natural progression of environmental change;

(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;

(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;

(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and

(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.

(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas.

(d) Until the programmatic environmental statement is adopted, the board of oil and gas conservation shall prepare a written progress report after each regular meeting of the board and after any special board meeting that addresses the adoption or implementation of the programmatic environmental statement. A copy of each report must be sent to the environmental quality council.

History: En. Sec. 4, Ch. 238, L. 1971; R.C.M. 1947, 69-6504; amd. Sec. 1, Ch. 391, L. 1979; amd. Sec. 1, Ch. 473, L. 1987; amd. Sec. 1, Ch. 566, L. 1989.

Cross-References

Citizens' right to participate satisfied if environmental impact statement filed, 2-3-104.

Statement to contain information regarding heritage properties and paleontological remains, 22-3-433.

Public Service Commission, Title 69, ch. 1, part 1.

Statement under lakeshore protection provisions required, 75-7-213.

Impact statement for facility siting, 75-20-211.

Fees for impact statements concerning water permits, 85-2-124.

Energy emergency provisions — exclusion, 90-4-310.

75-1-202. Agency rules to prescribe fees. Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees which shall be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201. An agency must determine within 30 days after a completed application is filed whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this part. The fee assessed under this part shall be used only to gather data and information necessary to compile an environmental impact statement as defined in parts 1 through 3. No fee may be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(1).

Cross-References

Fees authorized for environmental review of subdivision plats, 76-4-105.

Fees in connection with environmental impact statement required before issuing permits to appropriate water, 85-2-124.

75-1-203. Fee schedule — maximums. (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule which may be adjusted depending upon the size and complexity of the proposed project. A fee may not be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of $2,500 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency may not exceed 2% of any estimated cost up to $1 million, plus 1% of any estimated cost over $1 million and up to $20 million, plus 1/2 of 1% of any estimated cost over $20 million and up to $100 million, plus 1/4 of 1% of any estimated cost over $100 million and up to $300 million, plus 1/8 of 1% of any estimated cost in excess of $300 million.

(3) If an application consists of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities. The estimated cost must be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(2), (7); amd. Sec. 47, Ch. 112, L. 1991; amd. Sec. 41, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 deleted second sentence of (4) that read: "Furthermore, each agency shall, pursuant to 5-11-210, provide the legislature with a complete report on the fees collected prior to the time that a request for an appropriation is made to the legislature"; and made minor changes in style.

75-1-204. Application of administrative procedure act. In adopting rules prescribing fees as authorized by this part, an agency shall comply with the provisions of the Montana Administrative Procedure Act.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(4).

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-1-205. Use of fees. All fees collected under this part shall be deposited in the state special revenue fund as provided in 17-2-102. All fees paid pursuant to this part shall be used as herein provided. Upon completion of the necessary work, each agency will make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(5); amd. Sec. 1, Ch. 277, L. 1983.

75-1-206. Multiple applications or combined facility. In cases where a combined facility proposed by an applicant requires action by more than one agency or multiple applications for the same facility, the governor shall designate a lead agency to collect one fee pursuant to this part, to coordinate the preparation of information required for all environmental impact statements which may be required, and to allocate and disburse the necessary funds to the other agencies which require funds for the completion of the necessary work.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(6).

75-1-207. Major facility siting applications excepted. No fee as prescribed by this part may be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Major Facility Siting Act, chapter 20 of this title.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(3).

Part 3

Environmental Quality Council

75-1-301. Definition of council. In this part "council" means the environmental quality council provided for in 5-16-101.

History: En. by Code Commissioner, 1979.

Cross-References

Qualifications, 5-16-102.

Term of membership, 5-16-103.

Officers, 5-16-105.

75-1-302. Meetings. The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council is entitled to receive compensation and expenses as provided in 5-2-302. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members but shall be reimbursed for their expenses.

History: En. Sec. 10, Ch. 238, L. 1971; amd. Sec. 6, Ch. 103, L. 1977; R.C.M. 1947, 69-6510.

75-1-303 through 75-1-310 reserved.

75-1-311. Examination of records of government agencies. The council shall have the authority to investigate, examine, and inspect all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

History: En. Sec. 15, Ch. 238, L. 1971; R.C.M. 1947, 69-6515.

75-1-312. Hearings — council subpoena power — contempt proceedings. In the discharge of its duties the council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council or any committee thereof or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the council, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

History: En. Sec. 16, Ch. 238, L. 1971; R.C.M. 1947, 69-6516.

Cross-References

Warrant of attachment or commitment for contempt, 3-1-513.

Depositions upon oral examinations, Rules 30(a) through 30(g), 31(a) through 31(c), M.R.Civ.P. (see Title 25, ch. 20).

Subpoena — disobedience, 26-2-104 through 26-2-107.

Criminal contempt, 45-7-309.

75-1-313. Consultation with other groups — utilization of services. In exercising its powers, functions, and duties under parts 1 through 3, the council shall:

(1) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments, and other groups as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations and individuals in order that duplication of effort and expense may be avoided, thus assuring that the council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

History: En. Sec. 17, Ch. 238, L. 1971; R.C.M. 1947, 69-6517.

75-1-314 through 75-1-320 reserved.

75-1-321. Appointment and qualifications of executive director. The council shall appoint the executive director and set his salary. The executive director shall hold a degree from an accredited college or university with a major in one of the several environmental sciences and shall have at least 3 years of responsible experience in the field of environmental management. He shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in 75-1-103; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

History: En. Sec. 11, Ch. 238, L. 1971; R.C.M. 1947, 69-6511.

75-1-322. Term and removal of executive director. The executive director is solely responsible to the council. He shall hold office for a term of 2 years beginning with July 1 of each odd-numbered year. The council may remove him for misfeasance, malfeasance, or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 13, Ch. 238, L. 1971; R.C.M. 1947, 69-6513.

Cross-References

Notice of removal to officer authorized to replace, 2-16-503.

Official misconduct, 45-7-401.

75-1-323. Appointment of employees. The executive director, subject to the approval of the council, may appoint whatever employees are necessary to carry out the provisions of parts 1 through 3, within the limitations of legislative appropriations.

History: En. Sec. 12, Ch. 238, L. 1971; R.C.M. 1947, 69-6512.

75-1-324. Duties of executive director and staff. It shall be the duty and function of the executive director and the staff to:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to such conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy and make recommendations to the governor and the legislature with respect thereto;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan; and

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among such activities and with a general ecologic perspective, and suggest legislation to remedy such situations.

History: En. Sec. 14, Ch. 238, L. 1971; R.C.M. 1947, 69-6514; amd. Sec. 42, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 deleted (10) that read: "(10) annually, beginning July 1, 1972, transmit to the governor and the legislature and make available to the general public an environmental quality report concerning the state of the environment, which shall contain:

(a) the status and condition of the major natural, manmade, or altered environmental classes of the state, including but not limited to the air, the aquatic (including surface water and ground water) and the terrestrial environments, including but not limited to the forest, dryland, wetland, range, urban, suburban, and rural environments;

(b) the adequacy of available natural resources for fulfilling human and economic requirements of the state in the light of expected population pressures;

(c) current and foreseeable trends in the quality, management, and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the state in the light of expected population pressures;

(d) a review of the programs and activities (including regulatory activities) of the state and local governments and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development, and utilization of natural resources; and

(e) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation"; and made minor changes in style.

Parts 4 through 10 reserved

Part 11

Environmental Contingency Grant Program

Part Cross-References

Resource indemnity trust, Art. IX, sec. 2, Mont. Const.

Department of Natural Resources and Conservation, 2-15-3301.

Resource indemnity trust tax, Title 15, ch. 38.

Fund structure, Title 17, ch. 2.

Renewable resource development program, Title 85, ch. 1, part 6.

Renewable resource development program, Title 90, ch. 2.

75-1-1101. Environmental contingency account objectives. (1) There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each biennium, $175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:

(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds $750,000, no allocation will be made; and

(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than $750,000, then an amount less than or equal to the difference between the unobligated cash balance and $750,000, but not to exceed $175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development; and

(d) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues to the resource indemnity trust interest account.

(5) The governor shall submit, as a part of the information required by 17-7-111, a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report.

History: En. Sec. 4, HB 922, L. 1985; amd. Sec. 5, HB 30, Sp. L. June 1986; amd. Sec. 138, Ch. 370, L. 1987; amd. Sec. 13, Ch. 418, L. 1987; amd. Sec. 48, Ch. 112, L. 1991; amd. Sec. 43, Ch. 349, L. 1993.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

1993 Amendment: Chapter 349 in (5), after "shall", substituted "submit, as a part of the information required by 17-7-111" for "as provided in 5-11-210, submit to the legislature"; and made minor changes in style.

Cross-References

Resource indemnity trust, Art. IX, sec. 2, Mont. Const.

Department of Natural Resources and Conservation, 2-15-3301.

Resource indemnity trust tax, Title 15, ch. 38.

Abatement of environmental emergencies, 82-4-357.

75-1-1102. Repealed. Secs. 16(1) and 21(2), Ch. 418, L. 1987.
History: En. Sec. 2, HB 922, L. 1985.

75-1-1103 through 75-1-1110 reserved.

75-1-1111. Repealed. Secs. 16(1) and 21(2), Ch. 418, L. 1987.
History: En. Sec. 5, HB 922, L. 1985.

75-1-1112. Repealed. Secs. 16(1) and 21(2), Ch. 418, L. 1987.
History: En. Sec. 6, HB 922, L. 1985.

CHAPTER 2

AIR QUALITY

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Chapter Cross-References

Local government smoke abatement programs, Title 7, ch. 31, part 1.

Clean Indoor Air Act of 1979, Title 50, ch. 40.

Energy emergency provisions — exclusion, 90-4-310.

Part 1

General Provisions and Administration

75-2-101. Short title. This chapter shall be known and may be cited as the "Clean Air Act of Montana".

History: En. Sec. 1, Ch. 313, L. 1967; R.C.M. 1947, 69-3904.

75-2-102. Policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.

(2) It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(3) To these ends it is the purpose of this chapter to:

(a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;

(b) provide for an appropriate distribution of responsibilities among the state and local units of government;

(c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and

(d) provide a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 313, L. 1967; R.C.M. 1947, 69-3905.

Cross-References

Beauty of the state, Preamble, Mont. Const.

Right to a clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-2-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(5) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(6) (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(8) "Emission" means a release into the outdoor atmosphere of air contaminants.

(9) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(10) "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(11) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of all or any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(12) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

(13) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(14) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

(15) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

(16) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, or slash and forest debris regulated under laws administered by the department of state lands.

History: En. Sec. 3, Ch. 313, L. 1967; amd. Sec. 13, Ch. 349, L. 1974; amd. Sec. 1, Ch. 308, L. 1977; R.C.M. 1947, 69-3906; amd. Sec. 1, Ch. 129, L. 1993; amd. Sec. 1, Ch. 502, L. 1993; amd. Sec. 1, Ch. 639, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 129 inserted definitions of hazardous waste, incinerator, and solid waste; and made minor changes in style. Amendment effective March 19, 1993.

Chapter 502 inserted definition of air pollutants; in definition of air pollution, after "presence", substituted "of air pollutants" for "in the outdoor atmosphere of one or more air contaminants"; in definition of person, before "subdivision", inserted "the state or a" and after "estate" inserted "an interstate body, the federal government or an agency of the federal government"; inserted definition of small business stationary source; and made minor changes in style. Amendment effective April 24, 1993.

Chapter 639 inserted definitions of commercial hazardous waste incinerator, environmental protection law, hazardous waste, incinerator, medical waste, and principal. Amendment effective May 13, 1993.

The definition of hazardous waste contained in Ch. 129 differed from the definition contained in Ch. 639. The definition in Ch. 639 was broader, so the codifier codified the broader definition. The definition of incinerator in Ch. 129 was identical to the definition in Ch. 639.

Retroactive Applicability: Section 9, Ch. 639, L. 1993, provided: "(1) [This act] applies retroactively, within the meaning of 1-2-109, to all commercial medical waste incinerators that have applied for but have not received by [the effective date of this act] [effective May 13, 1993] a permit under Title 75, chapter 2, and a license under 75-10-221.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to all commercial hazardous waste incinerators that have applied for but not received by [the effective date of this act] [effective May 13, 1993] a permit under Title 75, chapter 2, and a permit under 75-10-406."

75-2-104. Limitations — personal cause of action unabridged. Nothing in this chapter shall be construed to:

(1) grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

(2) affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

(3) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety;

(4) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

History: (1) thru (3)En. Sec. 19, Ch. 313, L. 1967; Sec. 69-3922, R.C.M. 1947; (4)En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974; Sec. 69-3921, R.C.M. 1947; R.C.M. 1947, 69-3921(4), 69-3922.

Cross-References

Indemnification for damage to air resources, Title 15, ch. 38.

Workers' compensation — liability, Title 39, ch. 71, part 4.

Workers' compensation — claim, Title 39, ch. 71, part 6.

Liability of employer for occupational disease, 39-72-302.

Montana Clean Indoor Air Act, Title 50, ch. 40.

Occupational health, Title 50, ch. 70.

Occupational safety, Title 50, ch. 71.

Mine safety, Title 50, ch. 72.

Mining operation — preventive measures, 82-4-231.

75-2-105. Confidentiality of records. (1) Records or other information concerning air pollutant sources that are furnished to or obtained by the board or department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air pollutant source that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party in the action. A trade secret not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. However, emission data and operating permits issued by the department pursuant to 75-2-217 through 75-2-219 may not be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made confidential by this section.

History: En. Sec. 15, Ch. 313, L. 1967; amd. Sec. 22, Ch. 349, L. 1974; amd. Sec. 1, Ch. 248, L. 1975; R.C.M. 1947, 69-3918; amd. Sec. 2, Ch. 502, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 502 in two places in (1), after "air", substituted "pollutant" for "contaminant" and in last sentence, after "data", inserted "and operating permits issued by the department pursuant to 75-2-217 through 75-2-219"; and made minor changes in style.

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

Uniform Declaratory Judgments Act — procedure, Title 27, ch. 8, part 3.

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

75-2-106. Small business compliance assistance advisory council — duties — secretary — meetings. (1) The small business compliance assistance advisory council, established in 2-15-2110, shall:

(a) render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program administered by the department;

(b) make periodic reports to the appropriate federal agency concerning the compliance of the small business stationary source technical and environmental compliance assistance program with the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.;

(c) review information for small business stationary sources to ensure that the information is understandable by the lay person and recommend changes to make the information understandable;

(d) consult with the small business stationary source representative provided for in 75-2-109 regarding problems faced by small business stationary sources concerning the implementation and application of the requirements of this chapter; and

(e) perform other duties necessary to meet the requirements of the federal Clean Air Act.

(2) The council shall elect a presiding officer from among its membership.

(3) The secretary of the council must be an employee of the department assigned to the small business stationary source technical and environmental compliance assistance program. The secretary shall keep all records of meetings and actions taken by the council and is responsible for the development and dissemination of any reports and advisory opinions of the council.

(4) The council shall hold at least one regular meeting each calendar year and keep a summary record of its proceedings that is open to the public for inspection. Special meetings may be called by the presiding officer or a majority of the council members. The secretary shall provide advance notice of the time and place for meetings to each member of the council.

History: En. Sec. 15, Ch. 502, L. 1993.

Compiler's Comments

Effective Date: Section 24(1), Ch. 502, L. 1993, provided that this section is effective on passage and approval. Approved April 24, 1993.

75-2-107. Small business stationary source technical and environmental compliance assistance program — duties. (1) The department shall establish a small business stationary source technical and environmental compliance assistance program.

(2) The program shall:

(a) provide information to small business stationary sources on compliance methods and technologies, pollution prevention, and accidental release detection and prevention;

(b) assist small business stationary sources in determining applicable requirements under this chapter and in receiving permits in a timely and efficient manner;

(c) provide small business stationary sources timely notice of their rights and obligations under this chapter;

(d) provide information to small business stationary sources regarding the availability of audit services that are useful for determining compliance status with the requirements of this chapter; and

(e) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

History: En. Sec. 16, Ch. 502, L. 1993.

Compiler's Comments

Effective Date: Section 24(1), Ch. 502, L. 1993, provided that this section is effective on passage and approval. Approved April 24, 1993.

75-2-108. Small business stationary sources — exceptions — waivers. (1) Upon petition, the department may designate a source to be a small business stationary source for purposes of receiving assistance from the small business stationary source technical and environmental compliance assistance program if the stationary source does not emit more than 100 tons per year of all air pollutants and:

(a) is a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(b) emits 50 tons or more per year of an air pollutant; or

(c) emits more than 75 tons per year of all air pollutants.

(2) After notice and an opportunity for public comment, the department may grant a petition submitted under subsection (1) upon finding that the source of air pollutants does not have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program.

(3) After notice and opportunity for public comment, the department may exclude from the definition of small business stationary source in 75-2-103 a category or subcategory of sources that the department determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program. The department may make this determination only after consulting with the appropriate federal agencies under Subchapter V of the federal Clean Air Act.

History: En. Sec. 17, Ch. 502, L. 1993.

Compiler's Comments

Effective Date: Section 24(1), Ch. 502, L. 1993, provided that this section is effective on passage and approval. Approved April 24, 1993.

75-2-109. Small business stationary source representative — duties. (1) The department shall establish a small business stationary source representative position that is not located in the department or subject to the direct supervision of the department.

(2) The small business stationary source representative shall represent the interests of small business stationary sources before the department and other appropriate local, state, and federal agencies concerning the implemen-

tation and application of the requirements of this chapter. In addition, the representative shall provide assistance to small business stationary sources in meeting the requirements of this chapter. In carrying out these activities, the representative shall:

(a) monitor the activities of the small business stationary source technical and environmental compliance assistance program;

(b) review and provide comments and recommendations to the department, local air pollution control programs, and the appropriate federal agencies regarding the development and implementation of regulations pertaining to air quality that impact small business stationary sources;

(c) facilitate and promote the participation of small business stationary sources in the development of new regulations pertaining to air quality that impact small business stationary sources;

(d) assist in the preparation and dissemination of reports and other information regarding the applicability of the requirements of this chapter to small business stationary sources;

(e) assist in the preparation of guideline documents by the small business stationary source technical and environmental compliance assistance program to ensure that these documents are readily understandable by the lay person;

(f) assist small business stationary sources and their trade associations to encourage voluntary compliance with the requirements of this chapter;

(g) cooperate with appropriate local, state, and federal agencies and private sector financial institutions to assist small business stationary sources in locating financial assistance necessary for compliance with the requirements of this chapter;

(h) consult with the small business compliance assistance advisory council regarding problems faced by small business stationary sources concerning the implementation and application of the requirements of this chapter; and

(i) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

History: En. Sec. 18, Ch. 502, L. 1993.

Compiler's Comments

Effective Date: Section 24(1), Ch. 502, L. 1993, provided that this section is effective on passage and approval. Approved April 24, 1993.

75-2-110 reserved.

75-2-111. Powers of board. The board shall:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits and permit applications, consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(1) thru (4); amd. Sec. 1, Ch. 560, L. 1979; amd. Sec. 1, Ch. 652, L. 1991.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(3) The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis.

History: (1)En. Sec. 4, Ch. 313, L. 1967; amd. Sec. 14, Ch. 349, L. 1974; Sec. 69-3907, R.C.M. 1947; (2)En. 69-3909.1 by Sec. 18, Ch. 349, L. 1974; Sec. 69-3909.1, R.C.M. 1947; R.C.M. 1947, 69-3907, 69-3909.1; (3)En. Sec. 2, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Eligibility for state aid, 75-2-302.

Enforcement by the Department, 75-2-401.

75-2-113. Terminated. Sec. 5, Ch. 673, L. 1989.

History: En. Sec. 1, Ch. 673, L. 1989.

75-2-114. Terminated. Sec. 5, Ch. 673, L. 1989.

History: En. Sec. 2, Ch. 673, L. 1989.

75-2-115 through 75-2-120 reserved.

75-2-121. Advisory council. The advisory council shall act in an advisory capacity to the department on matters relating to air pollution.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(4).

Cross-References

Composition of Council, 2-15-2106.

75-2-122. Chairman — secretary. (1) A chairman shall be elected by the advisory council from among its number.

(2) The secretary of the advisory council shall be a member of the staff of the department, designated by the director. The secretary shall keep all records of meetings of and actions taken by the council. He shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under this chapter and shall perform other duties as determined by the advisory council, not inconsistent with rules and policies adopted under this chapter or specific authority otherwise given the advisory council.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(1), (3).

Cross-References

Term of office, 2-15-2106.

75-2-123. Meetings. The advisory council shall hold at least two regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him on receipt of a written request signed by two or more members of the advisory council. Notice of the time and place for meetings shall be given in advance to each member of the advisory council by the secretary.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(2).

Cross-References

Right of public participation in government, Art. II, sec. 8, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Part 2

Standards, Permits, and Variances

Part Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Energy emergency — power of Governor to suspend pollution control standards, 90-4-310.

75-2-201. Classifying and reporting air contaminant sources. (1) The board may classify air contaminant sources which in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. Such classifications shall be made with special reference to effects on health, economic and social factors, and physical effects on property and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the board may require reporting shall make reports containing such information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant to air pollution which is available or reasonably capable of being assembled.

History: En. Sec. 7, Ch. 313, L. 1967; R.C.M. 1947, 69-3910.

75-2-202. Board to set ambient air quality standards. (1) The board shall establish ambient air quality standards for the state.

(2) Ambient air quality standards for fluorides shall be established through limitations upon the concentration of fluorides in forage grasses, hay, and silage.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(5); amd. Sec. 1, Ch. 565, L. 1981.

Cross-References

Compliance with air standards for facility siting, 75-20-401.

75-2-203. Board to set emission levels. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlling, and no emission in excess thereof shall be lawful.

(2) In any area where the concentration of air pollution sources or of population or where the nature of the economy or of land and its uses so require, the board may fix more stringent requirements governing the emis-

sion of air pollutants than those in effect pursuant to subsection (1) of this section.

(3) The board may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the board may, if necessary in some localities of this state, set more stringent standards by rule.

History: En. Sec. 10, Ch. 313, L. 1967; R.C.M. 1947, 69-3913.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-2-204. Rules relating to construction, installation, alteration, operation, or use. The board may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, unless a permit has been obtained under this part.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977; R.C.M. 1947, 69-3911(1); amd. Sec. 3, Ch. 502, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 502 near beginning, after "alteration", inserted "operation" and at end inserted "under this part"; and made minor changes in style.

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-2-205. Public hearings on rules. No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given, at the time of publication, the proposed text to comment thereon. Such notice shall be given and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act and rules made pursuant thereto.

History: En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; R.C.M. 1947, 69-3917(1); amd. Sec. 3, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-206. Study of effects of sulfur dioxide on health and environment. (1) To the extent that funds are available, the board shall conduct an ongoing study in areas of Montana where there are major industrial sources of sulfur dioxide. The study shall concentrate on the effects on human health and the environment of ambient sulfur dioxide concentrations separately and in conjunction with particulates.

(2) Notwithstanding other funding sources to pay for the study, the board may accept funds and grants from private and public sources.

History: En. Sec. 2, Ch. 504, L. 1987.

75-2-207 through 75-2-210 reserved.

75-2-211. Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(6) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

(7) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (6). If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons

why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(8) (a) If an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (7), if the department prepares the environmental impact statement; or

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (7), of its approval or denial of the application. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(9) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(10) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977; R.C.M. 1947, 69-3911(part); amd. Sec. 4, Ch. 560, L. 1979; amd. Sec. 1, Ch. 196, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 652, L. 1991; amd. Sec. 4, Ch. 502, L. 1993; amd. Sec. 2, Ch. 639, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 502 in (1) substituted "board" for "department", after "shall" inserted "by rule", and after "issuance" inserted "modification"; deleted former (2) that read: "(2) For all sources of air contaminants that are subject to the provisions of Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, the provisions of this section apply in addition to the other applicable provisions of this chapter.

(a) The board shall by rule require that permits issued to sources described in subsection (2) be of limited duration, but it may not limit the duration of the permits beyond that required by the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended.

(b) The board shall by rule provide for the renewal of permits issued to the sources.

(c) The board shall by rule establish a transition schedule for air quality permits held by sources of air contaminants subject to the provisions of subsection (2). The transition schedule must specify dates for the expiration of the permits, absent an application for renewal by the source. The transition schedule may not specify expiration dates that are earlier in time than those required by Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended. The transition schedule established by the board also applies to existing sources of air contaminants that are subject to the provisions of Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that do not hold an air quality permit from the department as of November 2, 1992"; deleted former (4) through (9) that read: "(4) Concurrent with the submittal of a permit application required by subsection (3) and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting requirements in this chapter, including the reasonable costs of:

(a) reviewing and acting upon the application;

(b) implementing and enforcing the terms and conditions of the permit if the permit is issued. However, this amount does not include any court costs or other costs associated with any enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable regulations or guidance;

(e) modeling, analysis, and demonstrations; and

(f) preparing inventories and tracking emissions.

(5) In addition to the fee required under subsection (4), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates the funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the assessments, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the assessments apportion the required funding in an equitable manner, and that the department has obtained legislative authorization for the expenditure and the necessary appropriation.

(6) As a condition of the continuing validity of permits issued by the department under this part prior to October 1, 1991, the department may require the permitholder to pay an annual fee sufficient to cover the costs identified in subsection (4).

(7) For any existing source of air contaminants that is subject to Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that is not required to hold an air quality permit from the department as of October 1, 1991, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the annual fee provided for in subsection (4). Nothing in this subsection may be construed as allowing the department to charge any source of air contaminants more than one annual fee that is designed to cover the costs identified in subsection (4).

(8) The fees collected by the department pursuant to this section must be deposited in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements in this chapter.

(9) (a) The department shall give written notice of the amount of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air contaminant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based only on the amount of the fee schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act provided for in Title 2, chapter 4, apply to any hearing before the board under this subsection (9)"; inserted (3) relating to permit program requirements; in (7), after "fees", inserted "required under 75-2-220", after "subsections" inserted "(2)", and after "(3)" substituted "and (6)" for "through (7) and (12)"; in (8)(a) and (8)(b), near beginning, substituted "preparation" for "compilation"; in (8)(a), after "Act", inserted "Title 75, chapter 1, parts 1 through 3"; in (8)(a)(i), before "receipt", inserted "department's"; in (8)(a)(i) and (8)(b) substituted "provided in subsection (7)" for "defined in subsection (13)"; in (8)(b), before "certified mail", deleted "registered or"; inserted (8)(d) relating to Department failure to act and judicial remedies; in (9), in first sentence after "request", inserted "a hearing before the board. The request for hearing must be filed", in second sentence, after "decision", substituted "and must include an" for "upon" and after "grounds" substituted "for the request" for "therefor, a hearing before the board", and substituted third sentence relating to contested case hearing for former third sentence that read: "A hearing shall be held under the provisions of the Montana Administrative Procedure Act"; in (10), after "elapsed", inserted "from the date of the decision"; and made minor changes in style.

Chapter 639 in (8)(b), near beginning, substituted "preparation" for "compilation" and near end, before "certified mail", deleted "registered or"; inserted (8)(c) providing that a permit application for construction, installation, alteration, or use of a source required to obtain a license under 75-10-221 or a permit under 75-10-406 must be acted on within the time stated in 75-2-215(2)(e); and made minor changes in style. Amendment effective May 13, 1993.

Style changes in (8) were slightly different in the two chapters. The codifier chose the more appropriate of the two.

Retroactive Applicability: Section 23(1), Ch. 502, L. 1993, provided that 75-2-220(7) applies retroactively to all permits issued by the Department of Health and Environmental Sciences pursuant to Title 75, chapter 2, prior to October 1, 1993. Section 23(2) provided that subsection (2) of 75-2-211, subsections (2) and (3) of 75-2-217, and subsection (8) of 75-2-220 apply retroactively to all activities identified in those subsections that are not subject to a permit issued by the Department of Health and Environmental Sciences pursuant to Title 75, chapter 2, as of October 1, 1993.

Section 9, Ch. 639, L. 1993, provided: "(1) [This act] applies retroactively, within the meaning of 1-2-109, to all commercial medical waste incinerators that have applied for but have not received by [the effective date of this act] [effective May 13, 1993] a permit under Title 75, chapter 2, and a license under 75-10-221.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to all commercial hazardous waste incinerators that have applied for but not received by [the effective date of this act] [effective May 13, 1993] a permit under Title 75, chapter 2, and a permit under 75-10-406."

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Air pollution control equipment — determination of use for tax purposes, 15-6-135.

Fund structure, 17-2-102.

Environmental impact statement, 75-1-201.

Requirement that siting of facility includes air permit — application — decision, 75-20-211, 75-20-401.

Time periods for permits under Montana Major Facility Siting Act superseded, 75-20-218.

Dairy products manufacturing plant — approval of air pollutant control by Department of Health and Environmental Sciences, 81-22-403.

75-2-212. Variances — renewals — filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption may be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) The exemption or partial exemption may be renewed if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application shall be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal the applicant shall give public notice of his application in accordance with rules of the board. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review thereof as provided by 75-2-411.

(5) Nothing in this section and no exemption, partial exemption, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or his property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment (hereinafter called a facility) who applies to the board for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than $500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed $80,000. The department shall prepare a statement of actual costs, and funds in excess of this shall be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if no public hearing, environmental impact statement, or appreciable investigation by the department is necessary, the minimum filing fee shall apply or the fee may be waived by the department. The filing fee shall be deposited in the state special revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenues derived from the filing fees shall be used by the department to:

(a) compile the information required for rendering a decision on the request;

(b) compile the information necessary for any environmental impact statements;

(c) offset the costs of a public hearing, printing, or mailing; and

(d) carry out its other responsibilities under this chapter.

History: **En. Sec. 13, Ch. 313, L. 1967; amd. Sec. 1, Ch. 186, L. 1975; amd. Sec. 8, Ch. 140, L. 1977; R.C.M. 1947, 69-3916; amd. Sec. 1, Ch. 265, L. 1983; amd. Sec. 1, Ch. 277, L. 1983.**

75-2-213 and 75-2-214 reserved.

75-2-215. Solid or hazardous waste incineration — additional permit requirements. (1) Until the department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a person may not construct, install, alter, or use a solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

(2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that changes the nature, character, or composition of its emissions from its design or permitted operation.

(3) The department may not issue a permit to a facility described in subsection (1) until:

(a) the owner or operator has provided to the department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler or industrial furnace, as proposed in the permit application or modification;

(b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the applicant has published, in the county where the project is proposed, at least three notices, in accordance with the procedures identified in 7-1-4127(2) and 7-1-4128(2), describing the proposed project;

(c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit application or modification;

(d) the department has reached a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment; and

(e) the department has issued a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit alteration under 75-2-211 and this section, whichever is later.

(4) The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to pro-

vide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(5) The board may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and boilers or industrial furnaces.

(6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter.

History: En. Sec. 5, Ch. 696, L. 1989; amd. Sec. 1, Ch. 605, L. 1991; amd. Sec. 2, Ch. 129, L. 1993; amd. Sec. 3, Ch. 639, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 129 in (1), at beginning, inserted "Until the department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this section", after "construct" substituted "install, alter, or use" for "modify, or operate", and after "incinerator" substituted "or a boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2)" for part of (1) and former (1)(a) and (1)(b) that read: "of any of the following categories until the department has issued an air quality permit pursuant to this chapter, including the conditions provided in this section:

(a) a new solid or hazardous waste incinerator that is designed to burn more than 200 pounds an hour of solid or hazardous waste; or

(b) an existing or permitted solid or hazardous waste incinerator that is designed to burn more than 200 pounds an hour of solid or hazardous waste and that incinerates or would incinerate solid or hazardous waste in an amount, form, kind, or content different from its designed or permitted operation or that incinerates or would incinerate any solid or hazardous waste that changes the nature, character, or composition of its emissions"; inserted (2) subjecting an existing or permitted incinerator or boiler or furnace to air quality permitting only under certain conditions; in (3)(a)(i), after "existing", substituted "emission source" for "incineration"; in (3)(a)(ii), after "solid or hazardous waste", inserted "or the use of hazardous waste as fuel for a boiler or industrial furnace"; inserted (5) allowing the Board to provide for general air quality permits by rule; in (6), after "incinerator", inserted "or a boiler or industrial furnace"; and made minor changes in style. Amendment effective March 19, 1993.

Chapter 639 inserted (3)(b) and (3)(c) stating that the Department may not issue a permit to a facility described in subsection (1) if a license is required under 75-10-221 or a permit is required under 75-10-406 until the applicant has published at least three notices and the Department has held a public hearing; and inserted (3)(e) providing that the Department may not issue a permit to a facility described in subsection (1) until the Department has issued a license under 75-10-221 or a permit under 75-10-406 if a license or permit is required and stating that the license issuance decision must be within 30 days of issuance of a 75-10-221 license or a 75-10-406 permit or within 90 days after receipt of a complete application for a permit or permit alteration under 75-2-211 and this section, whichever is later. Amendment effective May 13, 1993.

Retroactive Applicability: Section 9, Ch. 639, L. 1993, provided: "(1) [This act] applies retroactively, within the meaning of 1-2-109, to all commercial medical waste incinerators that have applied for but have not received by [the effective date of this act] [effective May 13, 1993] a permit under Title 75, chapter 2, and a license under 75-10-221.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to all commercial hazardous waste incinerators that have applied for but not received by [the effective date of this act] [effective May 13, 1993] a permit under Title 75, chapter 2, and a permit under 75-10-406."

75-2-216. Moratorium on certain solid and hazardous waste incinerator permits. (1) Except for remedial actions pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to 75-10-405(2)(c) or 75-10-416, until October 1, 1993, the department may not issue a permit to a solid or hazardous waste incinerator subject to the requirements of 75-2-215.

(2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely manner in adopting rules implementing 75-2-215 and in processing air quality permit applications required under 75-2-211 for solid or hazardous waste incinerators.

History: En. Sec. 1, Ch. 16, Sp. L. July 1992.

75-2-217. Operating permit program — exemptions — general requirements — duration. (1) The board shall provide by rule for the issuance, expiration, modification, amendment, suspension, revocation, and renewal of operating permits as part of an operating permit program to be administered by the department under this chapter. The board shall promulgate rules that are consistent with the operating permit framework and guidelines outlined in Subchapter V of the federal Clean Air Act and implementing regulations.

(2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(3) A person may not violate any requirement of an operating permit issued under 75-2-218 and this section or operate any source required to have a permit under this section without having complied with the requirements of the operating permit program administered by the department pursuant to 75-2-218, 75-2-219, and this section.

(4) The board may by rule provide for the exemption of one or more source categories, in whole or in part, from all or part of the requirements of this section if the board determines that compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for the sources. The board may premise this determination upon a similar determination by the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(5) The board may by rule provide for general operating permits covering numerous similar sources.

(6) An operating permit issued by the department under 75-2-218 and this section is effective for a period not to exceed 5 years and may be renewed.

(7) The operating permit program administered by the department pursuant to this section must include the following:

(a) adequate procedures that are streamlined and reasonable for:

(i) expeditiously determining when applications are complete;

(ii) processing applications; and

(iii) expeditiously reviewing permit actions, including application renewals or revisions;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;

(f) deadlines for submitting permit applications and compliance plans that are not later than 12 months after the source becomes subject to the operating permit requirement;

(g) deadlines for submitting permit renewal applications that are not later than 6 months before expiration of the existing operating permit;

(h) requirements for compliance plans that must be submitted with permit and renewal applications, including schedules of compliance and progress reports;

(i) requirements and procedures for periodic certification of source compliance with permit requirements, including the prompt reporting of any deviations from permit requirements;

(j) requirements for submission of any plans, specifications, or other information that the department considers necessary under this section;

(k) conditions and procedures for the transfer of operating permits;

(l) requirements and procedures for suspension, modification, amendment, and revocation of permits by the department for cause, including the modification or amendment of permits before renewal or termination to incorporate applicable limitations or requirements effective after permit issuance;

(m) requirements and procedures for incorporating into permits and permit renewals all applicable emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(n) requirements and procedures for permit modification and amendment;

(o) procedures for tracking activities conducted under general permits;

(p) requirements and procedures for issuing a single operating permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location;

(q) requirements and procedures for allowing changes within a permitted facility without requiring a permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions allowable under the permit; and

(r) other requirements necessary for the department to obtain the authorization to administer an operating permit program under the provisions of Subchapter V of the federal Clean Air Act.

History: En. Sec. 9, Ch. 502, L. 1993.

Compiler's Comments

Retroactive Applicability: Section 23(1), Ch. 502, L. 1993, provided that 75-2-220(7) applies retroactively to all permits issued by the Department of Health and Environmental Sciences pursuant to Title 75, chapter 2, prior to October 1, 1993. Section 23(2) provided that subsection (2) of 75-2-211, subsections (2) and (3) of 75-2-217, and subsection (8) of 75-2-220 apply retroactively to all activities identified in those subsections that are not subject to a permit issued by the Department of Health and Environmental Sciences pursuant to Title 75, chapter 2, as of October 1, 1993.

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved

April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

75-2-218. Permits for operation — application completeness — action by department — application shield — review by board. (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in subsection (3), the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The board may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217. Any transition schedule for action by the department must ensure that all permit applications required under 75-2-217 and this subsection for existing sources will be acted upon by the department before November 15, 1997.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the board. The request for hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(7) The requirements of subsections (5) and (6) apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be in compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217.

History: En. Sec. 10, Ch. 502, L. 1993.

Compiler's Comments

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

75-2-219. Permits for operation — limitations. Sections 75-2-217 and 75-2-218 may not be construed to:

(1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a source of air pollutants pursuant to 75-2-211 or 75-2-215;

(2) restrict the board's authority to adopt regulations providing for a single air quality permit system; or

(3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq.

History: En. Sec. 11, Ch. 502, L. 1993.

Compiler's Comments

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

75-2-220. Fees — special assessments — late payment assessments. (1) Concurrent with the submittal of a permit application required under this chapter and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements in this chapter, including:

(a) reviewing and acting upon the application;

(b) implementing and enforcing the terms and conditions of the permit. This amount does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable regulations or guidance;

(e) modeling, analysis, and demonstrations;

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source technical and environmental compliance assistance program; and

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(2) In recovering the costs described in subsection (1), the department may assess an application fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air pollutant subject to a national primary ambient air quality standard.

(3) The board shall by rule provide for the annual adjustment of all fees assessed for operating permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as required by Subchapter V of the federal Clean Air Act.

(4) In addition to the fee required under subsection (1), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments apportion the required funding in an equitable manner, and that the department has obtained the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(5) (a) If the applicant or permitholder fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed at the rate contained in 15-31-510(3); or

(ii) revoke the permit consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant or permitholder has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The board shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The board may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the board may by rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) The department may not charge more than one fee annually to a source of air pollutants for the costs identified in subsection (1).

History: En. Sec. 12, Ch. 502, L. 1993.

Compiler's Comments

Retroactive Applicability: Section 23(1), Ch. 502, L. 1993, provided that 75-2-220(7) applies retroactively to all permits issued by the Department of Health and Environmental Sciences pursuant to Title 75, chapter 2, prior to October 1, 1993. Section 23(2) provided that subsection (2) of 75-2-211, subsections (2) and (3) of 75-2-217, and subsection (8) of 75-2-220 apply retroactively to all activities identified in those subsections that are not subject to a permit issued by the Department of Health and Environmental Sciences pursuant to Title 75, chapter 2, as of October 1, 1993.

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved

April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

75-2-221. Deposit of air quality permitting fees. (1) All money collected by the department pursuant to 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements of this chapter.

(2) The operating permit fees and the construction permit fees must be maintained in separate accounts within the state special revenue fund.

(3) Upon request, the expenditure by the department of funds in these accounts may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be borne by the person requesting the audit.

History: En. Sec. 13, Ch. 502, L. 1993.

Compiler's Comments

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

Section 24(3) provided that subsection (2) of 75-2-221 is effective July 1, 1994.

75-2-222 through 75-2-230 reserved.

75-2-231. Medical waste and hazardous waste incineration — additional permit requirements. (1) Because of the potential formation of chlorinated dioxins, furans, heavy metals, and carcinogens as a result of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose, the board shall adopt rules establishing additional permit requirements for commercial medical waste and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The board shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream and hazardous waste stream that may be a source of chlorine, in order to minimize the potential creation of chlorinated dioxins, furans, heavy metals, and carcinogens;

(b) require commercial medical waste and commercial hazardous waste incinerators to achieve the lowest achievable emission rate, except when best available control technology is adequate to prevent exceeding the allowable daily intake standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other carcinogens;

(c) implement the requirements of subsection (2), including establishing procedures and standards for the collection of high quality scientific information and for the submission of the information by the applicant;

(d) establish procedures for the monitoring, testing, and inspection of:

(i) the medical waste stream and hazardous waste stream, including possible precursors to the formation of chlorinated dioxins, furans, heavy metals, and carcinogens;

(ii) combustion, including destruction and removal efficiencies; and

(iii) emissions, including continuous emission monitoring and air pollution control devices; and

(e) are necessary to implement the provisions of this section and to coordinate the requirements under this section with the requirements contained in 75-2-211 and 75-2-215.

(2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for a commercial medical waste or commercial hazardous waste incinerator shall provide, to the satisfaction of the department, the following information:

(a) a dispersion model of emissions, using approved methods, and those studies that are necessary to identify the potential community exposure;

(b) an analysis of the potential pathways for human exposure to air contaminants, particularly chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation, ingestion, and physical contact by the affected communities; and

(c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins, furans, heavy metals, and carcinogens for the affected communities.

(3) The department may not issue or alter an air quality permit pursuant to this chapter until the department has determined, based upon an analysis of the information provided by the applicant pursuant to subsection (2) and other necessary and relevant data, that the public health risk from chlorinated dioxins, furans, heavy metals, and other carcinogens will not exceed appropriate federal standards for allowable daily intake, as determined by the department after a review of established and relevant federal standards and guidelines.

(4) This section may not be construed in any way to:

(a) require the board to promulgate standards for the allowable daily intake of any substances for which the federal government has not established standards;

(b) allow the board to promulgate standards for the allowable daily intake of any substances for which the federal government has established standards that are more stringent than the federal standards; or

(c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality permit pursuant to 75-2-211 and 75-2-215.

History: En. Sec. 4, Ch. 639, L. 1993.

Compiler's Comments

Effective Date — Retroactive Applicability: Sections 9 and 10, Ch. 639, L. 1993, provided that this section is effective May 13, 1993, and is applicable to all commercial medical waste incinerators that have applied for but not received a permit under Title 75, Ch. 2, and a license under 75-10-221 by that date and to all commercial hazardous waste incinerators that have applied for but not received a permit under Title 75, Ch. 2, and a permit under 75-10-406 by that date.

75-2-232. Disclosure statement required. (1) An air quality permit for a commercial medical waste or commercial hazardous waste incinerator may not be issued, transferred, or altered pursuant to 75-2-211 and 75-2-215 without an application under this section. Before an application for the issuance, transfer, or alteration of a permit under 75-2-211 and 75-2-215 for a commercial medical waste or commercial hazardous waste incinerator may be approved, the applicant and each principal with respect to the applicant shall submit to the department a disclosure statement containing the following information:

(a) the name, business address, and social security number of the applicant and each principal;

(b) a description of any civil and administrative complaint filed within 5 years before the date of the application against the applicant or a principal for the violation of an environmental protection law and whether the complaint resulted in a civil or administrative penalty;

(c) a description of all judgments of criminal conviction entered against the applicant or a principal for the violation of an environmental protection law within 5 years before the date of the application; and

(d) a description of all judgments of criminal conviction entered against the applicant or a principal for the violation of an environmental protection law within 5 years before the date of the application in another state that resulted from the operation of a medical waste incinerator or a commercial hazardous waste incinerator. For the purposes of this subsection (d), an environmental protection law of another state means a law or administrative rule adopted pursuant to a law regulating solid or hazardous waste or underground storage tanks or protecting the air or water resource.

(2) A disclosure statement, as required in subsection (1), must be executed under oath or affirmation and is subject to the penalty for perjury. The department may verify and investigate the information contained in a statement required under this section.

(3) A person required to file a disclosure statement under this section shall provide assistance or information requested by the department that is related to the statement and shall cooperate in an inquiry or investigation conducted by the department under subsection (2).

History: En. Sec. 5, Ch. 639, L. 1993.

Compiler's Comments

Effective Date — Retroactive Applicability: Sections 9 and 10, Ch. 639, L. 1993, provided that this section is effective May 13, 1993, and is applicable to all commercial medical waste incinerators that have applied for but not received a permit under Title 75, Ch. 2, and a license under 75-10-221 by that date and to all commercial hazardous waste incinerators that have applied for but not received a permit under Title 75, Ch. 2, and a permit under 75-10-406 by that date.

75-2-233. Denial or modification of permit — mitigating factors. (1) The department may deny an application for the issuance, transfer, or alteration of a permit under 75-2-211 and 75-2-215 for a commercial medical waste or commercial hazardous waste incinerator or impose additional conditions on a permit pursuant to subsection (2) if within 5 years before the date of the application:

(a) a judgment of criminal conviction of an environmental protection law has been entered against the applicant or a principal;

(b) a civil or administrative complaint for a violation of an environmental protection law has resulted in the assessment of a penalty against the applicant or a principal;

(c) the applicant or a principal has a history of repeated violations of environmental protection laws; or

(d) a judgment or criminal conviction for a violation described in 75-2-232(1)(d) has been entered against the applicant or a principal.

(2) As provided under subsection (1), the department may impose additional conditions on a permit related to permit length, inspections, monitoring, recordkeeping, and reporting.

(3) In making the decision to deny an application or to impose conditions on a permit pursuant to subsection (1), the department shall consider the following mitigating factors:

(a) the nature and gravity of the violation of environmental protection laws or violations described in 75-2-232(1)(d);

(b) the degree of culpability of the applicant or a principal;

(c) the applicant's or principal's cooperation with the state or federal agencies involved in the complaints and convictions referred to in 75-2-232; and

(d) the applicant's or principal's dissociation from other persons or entities convicted of acts referred to in 75-2-232.

History: En. Sec. 6, Ch. 639, L. 1993.

Compiler's Comments

Effective Date — Retroactive Applicability: Sections 9 and 10, Ch. 639, L. 1993, provided that this section is effective May 13, 1993, and is applicable to all commercial medical waste incinerators that have applied for but not received a permit under Title 75, Ch. 2, and a license under 75-10-221 by that date and to all commercial hazardous waste incinerators that have applied for but not received a permit under Title 75, Ch. 2, and a permit under 75-10-406 by that date.

Part 3

Local Air Pollution Control

75-2-301. Local air pollution control programs. (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the board.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) Except as provided in subsection (4), the board by order may approve a local air pollution control program that:

(a) provides by ordinance or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402, and rules adopted under these sections;

(b) provides for the enforcement of requirements established under subsection (3)(a) by appropriate administrative and judicial processes; and

(c) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(4) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons per year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(5) If the board finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(6) If the board has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(7) If, after the hearing, the board determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(8) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(9) If the board finds that the control of a particular air pollutant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(10) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (8) may, with the approval of the board, establish or resume an air pollution control program that meets the requirements of subsection (3).

(11) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

History: En. Sec. 16, Ch. 313, L. 1967; amd. Sec. 23, Ch. 349, L. 1974; R.C.M. 1947, 69-3919; amd. Sec. 5, Ch. 560, L. 1979; amd. Sec. 1, Ch. 141, L. 1991; amd. Sec. 19, Ch. 502, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 502 in (3)(a) inserted "75-2-217 through 75-2-219"; in second sentence of (3)(c), after "provisions of", substituted "75-2-220" for "75-2-211"; in (4), (5), and two places in (9), after "air", substituted "pollutant" for "contaminant"; and made minor changes in style.

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

Cross-References

Montana Administrative Procedure Act — legislative review of rules — application, Title 2, ch. 4.

75-2-302. State and federal aid. (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant thereto shall be eligible for state aid in an amount up to 30% of the locally funded annual operating cost thereof.

(2) Federal aid granted to the state for developing or maintaining a local air pollution control program that is subsequently granted to a local program is not considered state aid.

(3) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided the program is currently approved by the board under 75-2-301.

History: En. Sec. 17, Ch. 313, L. 1967; R.C.M. 1947, 69-3920; amd. Sec. 2, Ch. 141, L. 1991.

Part 4

Enforcement, Appeal, and Penalties

75-2-401. Enforcement — notice — order for corrective action — administrative penalty. (1) When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than $10,000 for each day of each violation, not to exceed a total of $80,000. If an order issued by the board under this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 12 months prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider:

(i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged violator;

(ii) the alleged violator's full compliance history and good faith efforts to comply;

(iii) the duration of the violation as established by any credible evidence, including evidence other than the applicable test method;

(iv) payment by the violator of penalties previously assessed for the same violation;

(v) the economic benefit of noncompliance;

(vi) the seriousness of the violation; and

(vii) other matters as justice may require.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(5) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(6) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(7) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.

History: En. Sec. 11, Ch. 313, L. 1967; amd. Sec. 20, Ch. 349, L. 1974; amd. Sec. 6, Ch. 140, L. 1977; R.C.M. 1947, 69-3914; amd. Sec. 6, Ch. 560, L. 1979; amd. Sec. 1, Ch. 218, L. 1983; amd. Sec. 5, Ch. 502, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 502 in (1), in first sentence near beginning after "rule", substituted "adopted" for "made" and before "certified" deleted "registered or" and in third sentence, after "in the order", inserted "or an order to pay an administrative penalty, or both"; in (2), in first sentence after "shall", deleted "either affirm or modify an order previously issued or" and at end, after "action", substituted "or assess an administrative penalty, or both" for "it considers appropriate" and in second sentence, at beginning, inserted "As appropriate", before "time limits" deleted "and may prescribe", and at end, after "emissions", inserted "or the date by which the administrative penalty must be paid"; inserted (3) relating to amount of administrative civil penalty; inserted (4) relating to contested case hearing; and made minor changes in style.

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

Cross-References

Montana Administrative Procedure Act — contested cases — application, Title 2, ch. 4, part 6.

Montana Administrative Procedure Act — judicial review of agency action, Title 2, ch. 4, part 7.

75-2-402. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time within 24 hours for a hearing to be held before the board. Within 24 hours after the commencement of the hearing and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition such as that referred to in subsection (1), if the department finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 75-2-401. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders as provided in subsection (1) apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute or constitutional provisions or inheres in the office.

(4) Nothing in 75-2-205 may be construed to require a hearing before the issuance of an emergency order pursuant to this section.

History: **(1) thru (3)En. Sec. 12, Ch. 313, L. 1967; amd. Sec. 21, Ch. 349, L. 1974; amd. Sec. 7, Ch. 140, L. 1977; Sec. 69-3915, R.C.M. 1947; (4)En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; Sec. 69-3917, R.C.M. 1947; R.C.M. 1947, 69-3915, 69-3917(2).**

Cross-References

Declaration of emergency — authority of Governor, 10-3-104.

Local emergency — declaration, 10-3-402.

Energy emergencies — suspension of controls by Governor, 90-4-310.

75-2-403. Inspections. (1) The department, for the purpose of ascertaining the state of compliance with this chapter or rules and permits in force under it, may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed.

(2) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials when the department requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report stating all facts found which relate to compliance status.

History: **En. Sec. 9, Ch. 313, L. 1967; amd. Sec. 19, Ch. 349, L. 1974; amd. Sec. 5, Ch. 140, L. 1977; R.C.M. 1947, 69-3912; amd. Sec. 2, Ch. 218, L. 1983.**

Cross-References

Searches and seizures — right of private individuals to be secure, Art. II, sec. 11, Mont. Const.

75-2-404 through 75-2-410 reserved.

75-2-411. Judicial review. (1) A person aggrieved by an order of the board or local control authority may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(a) the board or local control authority acted without or in excess of its powers;

(b) the order was procured by fraud;

(c) the order is contrary to the evidence;

(d) the applicant has discovered new evidence, material to him, which he could not with reasonable diligence have discovered and produced at the hearing; or

(e) competent evidence was excluded to the prejudice of the applicant.

(2) The petition must be in such form and filed in such time as the board shall prescribe.

(3) (a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, a party aggrieved thereby may appeal to the district court of the judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the chairman of the board, which service shall be made by the delivery of a copy of the notice to the chairman and by filing the original with the clerk of the court to which the appeal is taken. Immediately after service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the same to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence, and whether or not the board made errors of law prejudicial to the appellant.

(4) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record.

History: En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; R.C.M. 1947, 69-3917(3) thru (5).

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

75-2-412. Criminal penalties — injunction preserved. (1) A person is guilty of an offense under this section if that person knowingly:

(a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

(b) makes a false material statement, representation, or certification on a form required under this chapter or in a notice or report required by a permit under this chapter; or

(c) renders inaccurate a monitoring device or method required under this chapter.

(2) A person guilty of an offense under subsection (1) is subject to a fine of not more than $10,000 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified as a misdemeanor. Each day of each violation constitutes a separate violation.

(3) Fines collected under this section, except fines collected by an approved local air pollution control program, must be deposited in the state general fund.

(4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate civil or administrative remedy. The department may institute and maintain in the name of the state any enforcement proceedings.

History: En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974; R.C.M. 1947, 69-3921(1) thru (3), (5); amd. Sec. 3, Ch. 218, L. 1983; amd. Sec. 42, Ch. 557, L. 1987; amd. Sec. 6, Ch. 502, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 502 substituted (1) relating to when person is guilty of violating section for former (1) that read: "(1) A person who violates this chapter or a rule, order, or permit made or issued under it, other than 75-2-105, is guilty of an offense and subject to a fine not to exceed $1,000. Each day of violation constitutes a separate offense"; substituted (2) setting civil and criminal penalties for former (2) that read: "(2) A person who willfully violates 75-2-105 is guilty of an offense and subject to a fine not to exceed $1,000"; substituted (3) concerning deposit of fines collected except those collected by an approved local air pollution control program for former text that read: "Fines collected, except those collected in a justice's court, shall be deposited to the state general fund"; and in (4), after "appropriate", inserted "civil or administrative".

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

Cross-References

Injunctions — Supreme Court jurisdiction, 3-2-205.

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Injunctions, Title 27, ch. 19.

Execution of a fine, 46-19-102.

75-2-413. Civil penalties — out-of-state litigants — effect of action. (1) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed $10,000 per violation. Each day of each violation constitutes a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.

(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) Money collected under this section must be deposited in the state general fund. This subsection does not apply to money collected by an approved local air pollution control program.

History: En. 69-3921.1 by Sec. 1, Ch. 98, L. 1975; amd. Sec. 2, Ch. 308, L. 1977; R.C.M. 1947, 69-3921.1; amd. Sec. 16, Ch. 560, L. 1979; amd. Sec. 4, Ch. 218, L. 1983; amd. Sec. 7, Ch. 502, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 502 in (1), in first sentence after "rule", substituted "adopted under this chapter" for "enforced thereunder", after "issued" substituted "under this chapter" for "pursuant thereto and after notice thereof has been given by the department", and at end, after "$10,000", inserted "per violation" and in second sentence, before "violation", inserted "each"; in (3) inserted second sentence providing that subsection is inapplicable to money collected by approved local air pollution control program; and made minor changes in style.

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

Cross-References

Injunctions, Title 27, ch. 19.

75-2-414 through 75-2-420 reserved.

75-2-421. Persons subject to noncompliance penalties — exemptions. (1) Except as provided in subsection (2), the department may assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source (other than a primary nonferrous smelter that has received a nonferrous smelter order under 42 U.S.C. 7419) that is not in compliance with any emission limitation specified in an order of the board, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;

(b) a stationary source that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under this chapter or 42 U.S.C. 7411, 7412, 7477, or 7603;

(c) a stationary source that is not in compliance with any other requirement under this chapter or any requirement of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.; or

(d) any source referred to in subsections (1)(a), (1)(b), or (1)(c) that has been granted an exemption, extension, or suspension under subsection (2) or that is covered by a compliance order, or a primary nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if that source is not in compliance with any interim emission control requirement or schedule of compliance under the extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with respect to a particular instance of noncompliance that:

(a) the department finds is de minimus in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds for it, a hearing before the board. A hearing must be held under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

History: En. Sec. 7, Ch. 560, L. 1979; amd. Sec. 8, Ch. 502, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 502 in (1) substituted "may" for "shall"; in (1)(b), after "under", inserted "this chapter or" and after "7412" inserted "7477, or 7603"; inserted (1)(c) authorizing Department to impose noncompliance penalty against person owning or operating stationary source not in compliance with other chapter requirement or requirement of Subchapter V of federal Clean Air Act; in (1)(d), near beginning, inserted "or (1)(c)"; at end of (3) inserted "Title 2, chapter 4, part 6"; and made minor changes in style.

Effective Dates: Section 24(2), Ch. 502, L. 1993, provided that 75-2-105, 75-2-204, 75-2-211, 75-2-217 through 75-2-220, subsections (1) and (3) of 75-2-221, 75-2-301, 75-2-401, 75-2-412, 75-2-413, and 75-2-421 are effective October 1, 1993, but that the Board and Department may adopt rules under these sections upon passage and approval. Approved April 24, 1993. Rules adopted to implement these sections may not be effective before October 1, 1993.

Cross-References

Montana Administrative Procedure Act — hearing, 2-4-612.

75-2-422. Amount of noncompliance penalty — late charge. (1) The amount of the penalty which shall be assessed and collected with respect to any source under 75-2-421 through 75-2-429 shall be equal to:

(a) the amount determined in accordance with the rules adopted by the board, which shall be no less than the economic value which a delay in compliance after July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted for such quarter from the costs under subsection (1)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does not submit a timely petition under 75-2-425(2)(b) or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421 through 75-2-429 on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

History: En. Sec. 8, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4, part 2.

75-2-423. Manner of making payment. (1) The assessed penalty required under 75-2-421 through 75-2-429 shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments, determined without regard to any adjustment or any subtraction under 75-2-422(1)(b), after the first payment shall be equal.

(2) The first payment shall be due on the date 6 months after the date of issuance of the notice of noncompliance under 75-2-425 with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(3) For the purpose of this section, the term "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under 75-2-425 and ends on the date on which such source comes into or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

History: En. Sec. 9, Ch. 560, L. 1979.

75-2-424. Adjustment of fee. (1) The department shall adjust from time to time the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under 75-2-425(2)(a) if the department finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of 75-2-421 through 75-2-429.

(2) Upon making a determination that a source with respect to which a penalty has been paid under 75-2-421 through 75-2-429 is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment within 180 days after such source comes into compliance and:

(a) provide reimbursement with interest to be paid by the state at appropriate prevailing rates for overpayment by such person; or

(b) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

History: En. Sec. 10, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — hearing procedure, Title 2, ch. 4, part 6.

75-2-425. Notice of noncompliance — challenge. (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to 75-2-421(1) which is not in compliance as provided in that subsection, within 30 days after the department has discovered the noncompliance.

(2) Each person to whom notice has been given pursuant to subsection (1) shall:

(a) calculate the amount of penalty owed (determined in accordance with 75-2-422(1)) and the schedule of payments (determined in accordance with 75-2-423) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or

(b) submit to the board a petition within 45 days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under 75-2-421(2) with respect to a particular source.

(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under 75-2-422 as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b).

History: En. Sec. 11, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — hearing procedure, Title 2, ch. 4, part 6.

75-2-426. Hearing on challenge. (1) The board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition under 75-2-425(2)(b) with respect to such source.

(2) If the petition is denied, the petitioner shall submit the material required by 75-2-425(2)(a) to the department within 45 days of the date of decision.

History: En. Sec. 12, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — applicability, Title 2, ch. 4, part 6.

75-2-427. Deposit of noncompliance penalty fees. All noncompliance penalties collected by the department pursuant to 75-2-421 through 75-2-429 shall be deposited in the state special revenue fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the state general fund.

History: En. Sec. 13, Ch. 560, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Fund structure, 17-2-102.

75-2-428. Effect of new standards on noncompliance penalty. In the case of any emission limitation, emission standard, or other requirement approved or adopted by the board under this chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

History: En. Sec. 14, Ch. 560, L. 1979.

75-2-429. Effect of noncompliance penalty on other remedies. (1) Any orders, payments, sanctions, or other requirements under 75-2-421 through 75-2-428 shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this chapter and shall in no way affect any civil or criminal enforcement proceedings brought under 75-2-412 or 75-2-413.

(2) The noncompliance penalties collected pursuant to 75-2-421 through 75-2-428 are intended to be cumulative and in addition to any other remedies, procedures, and requirements authorized by this chapter.

History: En. Sec. 15, Ch. 560, L. 1979.

Part 5
Asbestos Control

Part Cross-References

Asbestos regulation in building construction and demolition, Title 50, ch. 64, part 1.

75-2-501. Short title. This part may be cited as the "Asbestos Control Act".

History: En. Sec. 1, Ch. 581, L. 1989.

75-2-502. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Accreditation" means a certificate issued by the department that permits a person to work in an asbestos-related occupation.

(2) "Asbestos" means asbestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, or actinolite.

(3) "Asbestos project" means the encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition of asbestos in a building or other structure, or the transportation or disposal of asbestos-containing waste. The term does not include a project that involves less than 3 square feet in surface area or 3 linear feet of pipe.

(4) "Asbestos-related occupation" means an inspector, management planner, project designer, contractor, supervisor, or worker for an asbestos project.

(5) "Department" means the department of health and environmental sciences as provided in 2-15-2101.

(6) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, state or municipal agency, political subdivision of the state, or any other entity.

History: En. Sec. 2, Ch. 581, L. 1989.

75-2-503. Rulemaking authority — issuance of permits. (1) The department shall adopt rules establishing standards and procedures for accreditation of asbestos-related occupations and control of the work performed by persons in asbestos-related occupations. The rules must be consistent with federal law and include but are not limited to:

(a) standards for training course review and approval;

(b) standards for accreditation of applicants for asbestos-related occupations;

(c) examination requirements for accreditation of applicants for asbestos-related occupations;

(d) requirements for renewal of accreditation, including periodic refresher courses;

(e) revocation of accreditation;

(f) inspection requirements for asbestos projects and asbestos-related occupations credentials;

(g) criteria to determine whether and what type of control measures are necessary for an asbestos project and whether a project is completed in a manner sufficient to protect public health, including criteria setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a structure is necessary may not be based solely upon the results of airborne asbestos testing.

(h) requirements for issuance of asbestos project permits and conditions that permitholders shall meet;

(i) standards for seeking injunctions, criminal and civil penalties, or emergency actions;

(j) advance notification procedures and issuance of permits for asbestos projects; and

(k) fees, which must be commensurate with costs, for:

(i) review and approval of training courses;

(ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related occupation;

(iii) issuance of asbestos project permits; and

(iv) requested inspections of asbestos projects.

(2) For asbestos projects having a cost of $3,000 or less, the department shall issue asbestos project permits within 7 calendar days following the receipt of a properly completed permit application and the appropriate fee.

History: En. Sec. 3, Ch. 581, L. 1989; amd. Sec. 51, Ch. 16, L. 1991.

75-2-504. Facility permits — fee. (1) The department shall provide by rule a procedure for the issuance of an annual asbestos project permit to any facility that has an asbestos health and safety program meeting department criteria and that continuously employs accredited asbestos workers. This permit allows a facility to conduct asbestos projects within the confines of the facility's controlled area during the period for which the permit is in force. The provisions of this permit may not preclude state and federal requirements for asbestos project notification.

(2) The fee for a facility permit must reflect the actual cost of the department's application review, permit issuance, and facility inspections.

History: En. Sec. 4, Ch. 581, L. 1989.

75-2-505 through 75-2-507 reserved.

75-2-508. Asbestos control account. (1) There is an asbestos control account in the state special revenue fund. There must be deposited in the account all money received from:

(a) fees collected under this part; and

(b) civil penalties collected pursuant to 75-2-514.

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the asbestos control program established under this part.

History: En. Sec. 1, Ch. 596, L. 1991.

75-2-509 and 75-2-510 reserved.

75-2-511. Accreditation requirements — restrictions. (1) To qualify for accreditation in a particular asbestos-related occupation, a person must:

(a) (i) successfully complete an asbestos-related training course for that occupation approved by the department or the United States environmental protection agency; and

(ii) pass an examination approved by the department;

(b) satisfactorily demonstrate equivalent previous training or experience in the occupation as prescribed by department rule; or

(c) have successfully completed an asbestos-related training course for that occupation, approved by the United States environmental protection agency, during the time period immediately following the passage of this part and ending on December 31, 1989.

(2) After January 1, 1990, a person may not:

(a) engage in an asbestos-related occupation unless accredited in that occupation by the department;

(b) conduct an asbestos project without a permit from the department or violate the conditions of a permit;

(c) contract with or employ in an asbestos-related occupation a person not accredited in that occupation by the department; or

(d) offer a training course for an asbestos-related occupation to meet the accreditation requirements of this section unless the department approves the course.

(3) A person who applies for accreditation shall submit the fees and follow procedures prescribed by department rule.

History: En. Sec. 5, Ch. 581, L. 1989.

75-2-512. Repealed. Sec. 3, Ch. 596, L. 1991.

History: En. Sec. 6, Ch. 581, L. 1989.

75-2-513. Records. A person engaged in an asbestos project shall maintain the records required by department rule concerning the nature of project activities.

History: En. Sec. 7, Ch. 581, L. 1989.

75-2-514. Criminal and civil penalties — disposition of civil penalties. (1) The department may suspend, deny, or revoke the accreditation of or reprimand a person who:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or comply with the requirements of this part or any rule adopted by the department; or

(c) fails to meet any applicable federal or state standard for asbestos projects.

(2) Notwithstanding the provisions of any other law, a person who purposely or knowingly violates any provision of this part or an adopted rule or order issued pursuant to this part is guilty of a misdemeanor.

(3) If the department determines that a violation of this part or a rule promulgated pursuant to this part has occurred, it may issue an order compelling the person receiving the order to end the violation immediately.

(4) In addition to or instead of the remedies listed in subsections (1) through (3), an accredited person who purposely or knowingly violates this part or a rule adopted pursuant to this part that concerns the conduct of an asbestos project may be assessed a civil penalty by the district court of not more than $1,000 a day for an initial violation and $5,000 a day for each subsequent violation occurring within a 3-year period from the date of the initial violation.

(5) A district court may assess a civil penalty of not more than $25,000 a day upon a person who engages in an asbestos project without valid accreditation or a permit. In the case of a continuing violation, each day the violation continues constitutes a separate violation.

(6) Civil penalties collected under this part must be deposited into the account established in 75-2-508.

History: En. Sec. 9, Ch. 581, L. 1989; amd. Sec. 2, Ch. 596, L. 1991.

CHAPTER 3

NUCLEAR REGULATION

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Chapter Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Disposal of hazardous wastes — regulation, Title 75, ch. 10, part 4.

Disposal of wastes — mining operations, 82-4-231.

Western Interstate Nuclear Compact — state nuclear policy, Title 90, ch. 5, part 2.

Part 1
General Provisions

75-3-101. Policy. It is the policy of the state of Montana, in furtherance of its responsibility to protect the public health and safety, to:

(1) institute and maintain a regulatory program for sources of ionizing radiation so as to provide, for compatibility with the standards and regulatory programs of the federal government, a single effective system of regulation within the state and a system consistent insofar as possible with those of other states; and

(2) institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

History: En. Sec. 1, Ch. 108, L. 1967; R.C.M. 1947, 69-5801.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-3-102. Purpose. It is the purpose of this chapter to provide a program:

(1) of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source, and special nuclear materials; and

(4) to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

History: En. Sec. 2, Ch. 108, L. 1967; R.C.M. 1947, 69-5802.

Cross-References

Occupational Disease Act, Title 39, ch. 72.

Consumer Product Safety Act, Title 50, ch. 30.

Occupational Health Act, Title 50, ch. 70.

75-3-103. Definitions. The definitions used in this chapter are intended to be consistent with those used in 10 CFR 1-199 and 49 CFR 173.389-173.399. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Byproduct material" means:

(a) any radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to the radiation incident to, the process of producing or utilizing special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) "Department" means the department of health and environmental sciences.

(3) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

(4) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing quantities of byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared, or ultraviolet light.

(6) "Large quantity radioactive material" is that quantity of radioactive material defined in 49 CFR 173.389(b).

(7) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States nuclear regulatory commission, any successor thereto, or federal agencies licensed by the nuclear regulatory commission.

(8) "Registration" means the registering with the department by the legal owner, user, or authorized representative of sources of ionizing radiation in the manner prescribed by rule.

(9) "Source material" means uranium, thorium, or any other material which the department or the United States nuclear regulatory commission declares by order to be source material or ores containing one or more of the foregoing materials in such concentration as the department or the nuclear regulatory commission declares by order to be source material after the nuclear regulatory commission has determined the material in such concentration to be source material.

(10) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the department or the United States nuclear regulatory commission or any successor thereto declares by order to be special nuclear material or any material artificially enriched by any of the foregoing but does not include source material.

(11) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing quantities of byproduct, special nuclear

materials, or other radioactive material occurring naturally or produced artificially.

History: En. Sec. 3, Ch. 108, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 16, Ch. 140, L. 1977; R.C.M. 1947, 69-5803; amd. Sec. 1, Ch. 68, L. 1979; amd. Sec. 2, I.M. No. 84, approved Nov. 4, 1980.

75-3-104. Exemptions — sources, diagnosis, and therapy. (1) This chapter does not apply to the following sources or conditions:

(a) electrical equipment that is not intended primarily to produce radiation and that, by nature of design, does not produce radiation at the point of nearest approach at a weekly rate higher than one-tenth the appropriate limit for any critical organ exposed. The production testing or production servicing of such equipment is not exempt.

(b) radiation machines during process of manufacture or in storage or transit;

(c) any radioactive material while being transported in conformity with regulations adopted by the nuclear regulatory commission or any successor thereto or the interstate commerce commission and specifically applicable to the transportation of such radioactive materials.

(2) No exemptions under this section are granted for those quantities or types of activities that do not comply with the established rules promulgated by the nuclear regulatory commission or by any successor thereto.

(3) The provisions of this chapter may not be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

History: (1), (2)En. Sec. 15, Ch. 108, L. 1967; Sec. 69-5815, R.C.M. 1947; (3)En. Sec. 8, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5808, R.C.M. 1947; R.C.M. 1947, 69-5808(4), 69-5815; amd. Sec. 2, Ch. 68, L. 1979.

75-3-105. Conflicting laws. Ordinances, resolutions, or regulations now or hereafter in effect of the governing body of a municipality or county relating to byproduct, source, and special nuclear materials shall not be superseded by this chapter, provided that such ordinances or regulations are and shall continue to be consistent with the provisions of this chapter, amendments thereto, and rules thereunder.

History: En. Sec. 11, Ch. 108, L. 1967; R.C.M. 1947, 69-5811.

75-3-106. Confidentiality — trade secrets. A report of investigation or inspection or processes obtained under this chapter shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the department.

History: En. Sec. 6, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1975; amd. Sec. 17, Ch. 140, L. 1977; R.C.M. 1947, 69-5806(8).

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

75-3-107. Inspections. The department or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property within the jurisdiction of the department, other than a private dwelling, for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules promulgated thereunder, and the owner, occupant, or person in charge of such property shall permit such entry and inspection. Entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

History: En. Sec. 7, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5807.

Cross-References

Searches and seizures — right of private individual to be secure, Art. II, sec. 11, Mont. Const.

75-3-108. Inspection agreements and training programs. (1) The department, on behalf of the state, may enter into an agreement or agreements with the federal government, other states, or interstate agencies whereby this state shall perform, on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The department and any other appropriate state agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter.

History: En. Sec. 10, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5810.

Part 2

Control of Radioactive Substances

Part Cross-References

Northwest Interstate Compact on Low-Level Radioactive Waste Management, Title 75, ch. 3, part 5.

75-3-201. State radiation control agency. (1) The department is the state radiation control agency.

(2) Under the laws of this state, the department may employ, compensate, and prescribe the powers and duties of the individuals which are necessary to carry out this chapter.

(3) The department may for the protection of the occupational and public health and safety:

(a) develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation;

(b) develop programs and adopt rules with due regard for compatibility with federal programs for licensing and regulation of byproduct, source, radioactive waste, and special nuclear materials and other radioactive materials. These rules shall cover equipment and facilities, methods for transporting, handling, and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas and sources, and methods and effectiveness of controlling individuals in posted and restricted areas.

(c) adopt rules relating to control of other sources of ionizing radiation. These rules shall cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

(d) advise, consult, and cooperate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing radiation;

(e) accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(f) encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation;

(g) collect and disseminate information relating to control of sources of ionizing radiation, including:

(i) maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under this chapter and any administrative or judicial action pertaining thereto;

(iii) maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending or adopted, and proceedings thereon.

History: En. Sec. 4, Ch. 108, L. 1967; amd. Sec. 83, Ch. 349, L. 1974; R.C.M. 1947, 69-5804.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Northwest Interstate Compact on Low-Level Radioactive Waste Management, Title 75, ch. 3, part 5.

75-3-202. Licensing and registration. (1) The department may provide by rule for general or specific licensing of persons to receive, possess, or transfer radioactive materials and devices or equipment utilizing such materials. The rules shall provide for amendment, suspension, or revocation of licenses pursuant to 75-3-401 and 75-3-403.

(2) Each application for a specific license shall be in writing and shall state such information as the department by rule may determine to be necessary to decide the technical, insurance, and financial qualifications or any other qualification of the applicant as the department considers reasonable and necessary to protect the occupational and public health and safety. The department may, at any time after the filing of the application and before the expiration of the license, require further written statements and may make such inspections as the department considers necessary in order to determine whether the license should be granted, denied, modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require an application or statement to be made under oath or affirmation.

(3) Each license shall be in such form and contain such terms and conditions as the department may by rule prescribe.

(4) No license issued pursuant to the provisions of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license may be assigned or in any manner disposed of.

(5) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules or orders issued in accordance with the provisions of this chapter.

(6) The department may require registration and inspection of persons dealing with sources of ionizing radiation which do not require a specific license and may require compliance with specific safety standards to be promulgated by the department.

(7) The department is authorized to exempt certain users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of the users will not constitute a significant risk to the health and safety of the public.

(8) Rules promulgated pursuant to this chapter may provide for recognition of such other state or federal licenses as the department considers desirable, subject to such registration requirements as the department prescribes.

History: En. Sec. 6, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1975; amd. Sec. 17, Ch. 140, L. 1977; R.C.M. 1947, 69-5806(1) thru (7), (9); amd. Sec. 1, Ch. 574, L. 1983.

75-3-203. Federal-state agreements. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state.

(2) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal government shall be deemed to possess the same pursuant to this chapter, which shall expire either 90 days after receipt from the department of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

History: En. Sec. 9, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5809.

75-3-204. Records. (1) The department shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the department may require, subject to such exemptions as may be provided by rules.

(2) The department shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules of the department. Copies of these records and those required to be kept by subsection (1) of this section shall be submitted to the department on request.

(3) The department shall adopt reasonable regulations, compatible with those of the United States nuclear regulatory commission or the national committee on radiation protection, pertaining to reports of exposure of personnel to radiation. The regulations shall require that reports of excessive

exposure be made to the individual exposed and to the department and shall make provision for periodic and terminal reports to individuals for whom personnel monitoring is required.

History: En. Sec. 8, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5808(1) thru (3); amd. Sec. 3, Ch. 68, L. 1979.

Part 3

Disposal of Large Quantities of Radioactive Material

Part Cross-References

Northwest Interstate Compact on Low-Level Radioactive Waste Management, Title 75, ch. 3, part 5.

75-3-301. Definition. Notwithstanding the definition in 75-3-103, as used in this part "person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

History: En. 69-5817 by Sec. 1, Ch. 68, L. 1977; R.C.M. 1947, 69-5817; amd. Sec. 4, Ch. 68, L. 1979.

75-3-302. Disposal of large quantities of radioactive material prohibited — exceptions and exclusion. (1) No person may dispose of large quantity radioactive material, byproduct material, or special nuclear material within the state of Montana.

(2) Byproduct material (except large quantity radioactive material) possessed, used, and transported for educational purposes, scientific research and development, medical research, diagnosis, and treatment, geophysical surveying, and similar uses licensed by the United States nuclear regulatory commission shall be excepted from this part, provided that such material is being or has been lawfully disposed of within Montana upon the effective date of this Act.

(3) Nothing in this part precludes the construction of a nuclear facility approved under the requirements of the Montana Major Facility Siting Act, or the mining of any raw ore, provided that such activity is not inconsistent with this part.

History: En. 69-5818, 69-5819, 69-5821 by Secs. 2, 3, 5, Ch. 68, L. 1977; R.C.M. 1947, 69-5818, 69-5819, 69-5821; amd. Sec. 3, I.M. No. 84, approved Nov. 4, 1980.

Cross-References

Montana Major Facility Siting Act, Title 75, ch. 20.

75-3-303. Penalty. A person who knowingly or purposely disposes of large quantity radioactive material, byproduct material, or special nuclear material within Montana shall be fined an amount not more than $5,000 or be imprisoned for not more than two years, or both, for each offense. A person who negligently disposes of large quantity radioactive material, byproduct material, or special nuclear material within Montana shall be fined not more than $1,000 for each offense. In this part, each day of violation constitutes a separate offense.

History: En. 69-5820 by Sec. 4, Ch. 68, L. 1977; R.C.M. 1947, 69-5820; amd. Sec. 4, I.M. No. 84, approved Nov. 4, 1980.

Cross-References
Classification of offenses, 45-1-201.
Felony defined, 45-2-101.
Execution of a fine, 46-19-102.

75-3-304. Policy. It is the policy of the state of Montana, in furtherance of its responsibility to protect the public health and safety, under the police powers of the state and for protection of the constitutional right to a healthy environment, to prohibit the disposal of certain radioactive material.

History: En. Sec. 1, I.M. No. 84, approved Nov. 4, 1980.

Cross-References
Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.
Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Part 4

Enforcement, Appeal, and Penalties

75-3-401. Administrative hearings. In a proceeding under this chapter for granting, suspending, revoking, or amending a license or for determining compliance with or granting exceptions from rules adopted under this chapter, the board of health and environmental sciences shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding and shall admit the person as a party to the proceeding.

History: En. Sec. 12, Ch. 108, L. 1967; amd. Sec. 84, Ch. 349, L. 1974; R.C.M. 1947, 69-5812(1).

Cross-References
Montana Administrative Procedure Act — contested case hearings, Title 2, ch. 4, part 6.

75-3-402. Emergency impoundment of materials. The department shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or who fails to observe the provisions of this chapter or any rules promulgated hereunder.

History: En. Sec. 14, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5814.

75-3-403. Emergency orders and rules. When the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as considered necessary to meet the emergency. Notwithstanding any provision of this chapter to the contrary, the rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it immediately but on application to the board shall be afforded a prompt hearing. On the basis of the hearing the emergency rule or order shall be continued, modified, or revoked by the board within 30 days after the hearing or when the emergency no longer exists.

History: En. Sec. 12, Ch. 108, L. 1967; amd. Sec. 84, Ch. 349, L. 1974; R.C.M. 1947, 69-5812(2).

Cross-References
Emergency rules, 2-4-303.

75-3-404. Prohibited activity. (1) No person shall acquire, own, possess, or use any radioactive byproduct material, source material, special nuclear materials, or other radioactive materials, occurring naturally or produced artificially, without having been granted a license therefor from the department or transfer to another or dispose of said materials without first having been granted approval of the department therefor in accordance with the administrative rules of the department.

(2) It shall be unlawful for any person to use, manufacture, produce, or knowingly transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless such person is licensed by or registered with the department in accordance with the provisions of this chapter and rules issued hereunder.

History: (1)En. Sec. 16, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5816, R.C.M. 1947; (2)En. Sec. 13, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5813, R.C.M. 1947; R.C.M. 1947, 69-5813, 69-5816(part).

75-3-405. Penalty. A person who violates 75-3-404 is guilty of a misdemeanor punishable by a fine of not less than $100 and not more than $1,000 or by confinement in the county jail of not less than 30 days and not more than 90 days or by both.

History: En. Sec. 16, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5816(part); amd. Sec. 5, Ch. 68, L. 1979.

Cross-References

Execution of a criminal fine, 46-19-102.

General penalty, 50-1-104.

75-3-406. Injunctions. The department may maintain an action in the district court to enjoin a continuance of an act in violation of this chapter or of a rule or order issued under this chapter. If the court finds that the defendant is violating or has violated any of the provisions of this chapter or any rule or order issued under this chapter, it shall enjoin the defendant from a continuance thereof.

History: En. Sec. 1, Ch. 323, L. 1989.

75-3-407. Civil penalties — deposit in general fund — injunctions not barred. (1) A person who violates this chapter or a rule or order issued under this chapter is subject to a civil penalty not to exceed $5,000 for each violation. For purposes of this section, each day of a violation is a separate violation.

(2) The department shall initiate civil proceedings in district court to recover a penalty under subsection (1).

(3) Civil penalties collected under this section must be deposited in the general fund.

(4) An action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

History: En. Sec. 2, Ch. 323, L. 1989.

Part 5

Northwest Interstate Compact on Low-Level Radioactive Waste Management

Part Cross-References

Western Interstate Nuclear Compact — state nuclear policy, Title 90, ch. 5, part 2.

75-3-501. Northwest Interstate Compact on Low-Level Radioactive Waste Management. The legislature of the state of Montana approves and ratifies the compact designated as the "Northwest Interstate Compact on Low-Level Radioactive Waste Management", which compact is as follows:

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

ARTICLE I — Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II — Definitions

As used in this compact:

(1) "Facility" means any site, location, structure, or property, excluding federal waste facilities, used or to be used for the storage, treatment, or disposal of low-level waste.

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, spent reactor fuel, or material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(3) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(4) "Host state" means a state in which a facility is located.

ARTICLE III — Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(2) periodic unannounced inspection of the premises of such generators and the waste management activities thereon;

(3) authorization of the containers in which such waste may be shipped and a requirement that generators use only that type of container authorized by the state;

(4) assurance that inspections of the carriers which transport such waste are conducted by proper authorities and appropriate enforcement action is taken for violations;

(5) after receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, taking appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this article. Nothing in this article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this article.

ARTICLE IV — Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside the region comprising the party states, except as provided in Article V.

(3) Until such time as paragraph (2) of this article takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate must be in such form as may be required by the host state and shall contain at least the following:

(a) the generator's name and address;

(b) a description of the contents of the low-level waste container;

(c) a statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his agent or by a representative of the United States Nuclear Regulatory Commission and was found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state;

(d) a binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprising the party states in order to maximize public health and safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in its region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho, which host hazardous chemical waste disposal facilities, will allow access to such facilities by generators within other party states. Nothing in this compact may be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region composed of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facilities to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

ARTICLE V — Northwest Low-Level Waste Compact Committee

The Governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest Low-Level Waste Compact Committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprising the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

ARTICLE VI — Eligible Parties and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact shall become effective upon

enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this article, any eligible party state may become a party to this compact by the execution of an executive order by the Governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its Legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Paragraph (2) of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every 5-year period.

ARTICLE VII — Severability

If any provision of this compact or its application to any person or circumstance is held to be invalid, all other provisions of this compact and the application of all of its provisions to all other persons and circumstances shall remain valid, and to this end the provisions of this compact are severable.

History: En. Sec. 1, Ch. 242, L. 1983.

75-3-502. Administration of compact — fees. (1) The department of health and environmental sciences, as the state radiation control agency, shall administer the provisions of the compact.

(2) The department may assess and collect fees for services rendered in inspecting and regulating low-level radioactive waste generators, transporters, and disposal facilities. Such fees must cover the department's costs for those services and must be deposited in the state special revenue fund for use by the department. State and local government agencies, including the university system, are exempt from the payment of fees.

(3) The department may adopt rules under the authority contained in 75-3-201(3)(b) to implement the provisions of this compact.

History: En. Sec. 2, Ch. 242, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Fund structure, 17-2-102.

Part 6
Montana Radon Control Act

Part Compiler's Comments

Effective Date: Section 12, Ch. 527, L. 1993, provided: "[This act] [75-3-601 through 75-3-607] is effective July 1, 1993."

75-3-601. Short title. This part may be cited as the "Montana Radon Control Act".

History: En. Sec. 1, Ch. 527, L. 1993.

75-3-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences.

(2) "Inhabitable real property" means any real property that includes a building affixed to land.

(3) "Mitigation project" means to repair or alter a building or design for the purpose, in whole or in part, of reducing the concentration of radon in the indoor atmosphere.

(4) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, consultant, state or municipal agency, political subdivision of the state, or any other entity.

(5) "Radon" means any of the gaseous radioactive decay products of uranium or thorium.

(6) "Radon progeny" means any of the radioactive decay products of radon.

(7) "Radon-related occupation" means the occupation of any person who performs radon gas or radon progeny measurements, including sample collection, analysis, or interpretation of those measurements, or who performs radon gas or radon progeny mitigation.

History: En. Sec. 2, Ch. 527, L. 1993.

75-3-603. Radon testing and mitigation proficiency listing requirements. In order to be publicly listed as proficient by the department in a radon-related occupation, a person shall pass a United States environmental protection agency proficiency examination approved by the department.

History: En. Sec. 3, Ch. 527, L. 1993.

75-3-604. Voluntary disclosure of information to department. (1) The results of measurements of radon gas or radon progeny performed by a person may be reported to the department. The report may include the radon levels detected and the location and description of the building.

(2) Except for use in conducting legitimate scientific studies, as determined by the department, data and information relating to radon gas and radon progeny contamination at nonpublic properties, including residential dwellings, gathered under this part must be considered confidential by the department. The department shall provide the bureau of mines and geology with all information received by the department under subsection (1) for conducting legitimate scientific studies. The department may not release the data or information in its possession to anyone other than the owner or occupant of the property.

History: En. Sec. 4, Ch. 527, L. 1993.

75-3-605. Public information and education. The department shall initiate and administer a program designed to educate and inform the public concerning radon gas and radon progeny. The program must include but is not limited to:

(1) public presentations to interested parties;

(2) developing, reproducing, and distributing printed materials to homeowners and other interested groups;

(3) responding to telephone inquiries on a maintained toll-free telephone number;

(4) providing technical and training information for radon measurement and mitigation;

(5) maintaining and distributing lists of qualified persons who perform measurement and mitigation services;

(6) developing and implementing an effective communication strategy to encourage all homeowners to test for radon; and

(7) encouraging cooperative partnerships to promote radon testing of buildings and homes.

History: En. Sec. 5, Ch. 527, L. 1993.

75-3-606. Radon disclosure statement on real estate documents — disclosure of prior radon testing — immunity from liability. (1) After January 1, 1994, a radon disclosure statement must be provided on at least one document, form, or application executed prior to the execution of any contract for the purchase and sale of inhabitable real property. The seller or seller's agent shall provide the following disclosure statement to the buyer, and the buyer shall acknowledge receipt of this disclosure statement by signing a copy of the disclosure statement:

"RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT."

(2) Whenever a seller knows that a building has been tested for radon gas and radon progeny, the seller shall provide to the buyer, with the contract of sale, a copy of the results of that test and evidence of any subsequent mitigation or treatment. A prospective buyer who contracts for the testing may receive the results of that testing. The furnishing of test results and evidence of mitigation or treatment is not to be construed as a promise, warranty, or representation of any sort by the seller or the seller's agent that the test results are accurate or that the mitigation or treatment is effective.

(3) A seller or seller's agent who complies with subsections (1) and (2) is not liable in any action based on the presence of radon gas or radon progeny in the building.

History: En. Sec. 6, Ch. 527, L. 1993.

75-3-607. Radon control account. (1) There is a radon control account in the state special revenue fund. There must be deposited in the account all money received from any loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of this part that are received from the federal government and from other sources, public or private.

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the program established under this part.

History: En. Sec. 7, Ch. 527, L. 1993.

CHAPTER 4

RESERVED

CHAPTER 5

WATER QUALITY

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Chapter Cross-References

Municipal Revenue Bond Act of 1939, Title 7, ch. 7, part 44.

Metropolitan sanitary and storm sewer district, Title 7, ch. 13, part 1.

County water and sewer districts, Title 7, ch. 13, part 22.

Public sewer systems, Title 7, ch. 13, part 42.

Nuisances, Title 27, ch. 30.

Water treatment plant operators, Title 37, ch. 42.

Water well contractors, 37-43-101.

Public water supply, Title 75, ch. 6, part 1.

Watershed protection — when construction prohibited, 75-6-112.

Protection of lake areas, Title 75, ch. 7, part 2.

Sanitation in subdivisions, Title 76, ch. 4, part 1.

Floodway management and regulation, Title 76, ch. 5.

Conservation districts, Title 76, ch. 15.

Watershed protection of state forests, 77-5-101, 77-5-102.

Agricultural chemical ground water protection, Title 80, ch. 15.

Action for damage to water supply caused by metal mining operation, 82-4-355.

Water Resources Act, Title 85, ch. 1, part 2.

Waste and contamination of ground water prohibited, 85-2-505.

Water conservancy districts, Title 85, ch. 9.

Energy emergency provisions — exclusion, 90-4-310.

Part 1

General Provisions

75-5-101. Policy. It is the public policy of this state to:

(1) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(2) provide a comprehensive program for the prevention, abatement, and control of water pollution.

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975; R.C.M. 1947, 69-4801(1).

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-5-102. Purpose — rights of action not abridged. (1) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters.

(2) This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person, as owner of water rights or otherwise, in the exercise of his rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(4).

Cross-References

Indemnification against loss to environment, Title 15, ch. 38.

75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those

changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

(10) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(15) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(16) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(17) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(18) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(19) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters which exceeds that permitted

by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

(20) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(21) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(22) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(23) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

(24) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(25) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(26) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

History: En. Sec. 122, Ch. 197, L. 1967; amd. Sec. 2, Ch. 21, L. 1971; amd. Sec. 1, Ch. 506, L. 1973; amd. Sec. 59, Ch. 349, L. 1974; amd. Sec. 2, Ch. 455, L. 1975; amd. Sec. 3, Ch. 308, L. 1977; amd. Sec. 1, Ch. 444, L. 1977; R.C.M. 1947, 69-4802; amd. Sec. 1, Ch. 337, L. 1993; amd. Sec. 1, Ch. 340, L. 1993; amd. Sec. 1, Ch. 595, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 337 in definition of treatment works inserted "including sewage lagoons"; and inserted definition of water well.

Chapter 340 in definition of pollution inserted last sentence clarifying that short-term water authorizations are not considered pollution.

Chapter 595 inserted definitions of degradation, existing uses, high-quality waters, interested person, mixing zone, parameter, and water quality protection practices; and made minor changes in style. Amendment effective April 29, 1993.

Applicability: Section 10, Ch. 595, L. 1993, provided: "[This act] applies to all requests to degrade state waters filed with the department after [the effective date of this act]." Effective April 29, 1993.

75-5-104. Special applicability. This chapter applies to drainage or seepage from all sources, including that from artificial, privately owned ponds or lagoons, if such drainage or seepage may reach other state waters in a condition which may pollute the other state waters.

History: En. Sec. 124, Ch. 197, L. 1967; amd. Sec. 3, Ch. 21, L. 1971; R.C.M. 1947, 69-4804.

Cross-References

Waters property of state, Art. IX, sec. 3, Mont. Const.

75-5-105. Confidentiality of records. Except as provided in 80-15-108, any information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if he wishes such information to enjoy confidential status. The department shall be served in any such action and may intervene as a party therein. Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section.

History: En. Sec. 16, Ch. 21, L. 1971; amd. Sec. 10, Ch. 455, L. 1975; R.C.M. 1947, 69-4822; amd. Sec. 25, Ch. 668, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Uniform Declaratory Judgments Act, Title 27, ch. 8.

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

75-5-106. Interagency cooperation — enforcement authorization. (1) The council, board, and department may require the use of records of all state agencies and may seek the assistance of such agencies. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the

department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to local water quality districts.

History: En. Sec. 21, Ch. 21, L. 1971; R.C.M. 1947, 69-4827; amd. Sec. 25, Ch. 357, L. 1991.

Part 2

Administrative Agencies

75-5-201. Board rules authorized. (1) The board shall adopt rules for the administration of this chapter.

(2) The board's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(g); amd. Sec. 1, Ch. 504, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 504 inserted (2) authorizing a fee schedule or system for assessment of administrative penalties.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Local boards of health — powers and duties, 50-2-116.

75-5-202. Board hearings. The board shall hold hearings necessary for the proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the department.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(f).

75-5-203 through 75-5-210 reserved.

75-5-211. Department to administer chapter. (1) Except as otherwise provided, the department is responsible for administration of this chapter.

(2) The department may use its personnel and those of the local departments of health as necessary to administer this chapter.

History: En. Sec. 125, Ch. 197, L. 1967; amd. Sec. 4, Ch. 21, L. 1971; amd. Sec. 60, Ch. 349, L. 1974; R.C.M. 1947, 69-4805.

Cross-References

Water pollution control responsibility assigned to division of environmental sciences, 2-15-2103.

Department of Health and Environmental Sciences — rules regarding water and sewage requirements for hotels, 50-51-103.

75-5-212. Department research and information. The department shall:

(1) collect and furnish information relating to the prevention and control of water pollution;

(2) conduct or encourage necessary research and demonstrations concerning water pollution.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(d), (1)(e).

75-5-213. Comprehensive plan for prevention and control of water pollution. The department shall advise, consult, and cooperate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(h).

75-5-214 through 75-5-220 reserved.

75-5-221. Water pollution control advisory council — general. (1) The council provided for in 2-15-2107 shall select a chairman from among its members. The director of health and environmental sciences shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) It shall hold at least two regular meetings each calendar year. Special meetings shall be held at the call of the chairman or on written request of two or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform his duties.

(4) The council shall act only in an advisory capacity to the department on matters relating to water pollution.

History: En. Sec. 132, Ch. 197, L. 1967; amd. Sec. 10, Ch. 21, L. 1971; amd. Sec. 64, Ch. 349, L. 1974; R.C.M. 1947, 69-4812.

Part 3

Classification and Standards

Part Cross-References

Energy emergency — power of Governor to suspend pollution control standards, 90-4-310.

75-5-301. Classification and standards for state waters. Consistent with the provisions of 75-5-302 through 75-5-307 and 80-15-201, the board shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(3) review, from time to time at intervals of not more than 3 years, established classifications of waters and standards of water purity and classification;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified, and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; and

(c) establish criteria for determining whether a proposed activity or class of activities will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur; and

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent;

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3); and

(7) adopt rules to implement this section.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(part); amd. Sec. 26, Ch. 668, L. 1989; amd. Sec. 2, Ch. 595, L. 1993; (7)En. Sec. 5, Ch. 595, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 595 in introductory clause, after "provisions of", inserted "75-5-302 through 75-5-307 and"; inserted (4) requiring adoption of rules governing mixing zones; inserted (5) requiring adoption of rules implementing the nondegradation policy; inserted (6) requiring that rules establish criteria for various parameters; and inserted (7) regarding rules to implement this section. Amendment effective April 29, 1993.

Applicability: Section 10, Ch. 595, L. 1993, provided: "[This act] applies to all requests to degrade state waters filed with the department after [the effective date of this act]." Effective April 29, 1993.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-5-302. Revised classifications not to lower water quality standards — exception. In revising classifications or standards or in adopting new classifications or standards, the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted except upon a finding that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 75-5-307.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(i).

75-5-303. Nondegradation policy. (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3), the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally, and technologically feasible alternatives to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development that exceeds the benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Every 5 years, the department shall review authorizations to degrade state waters. To enable the department to adequately review authorizations as required under this section, the authorization holder shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the latest department review. The specific revised information required must be determined by the department. If, based on the review, the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization may be appealed to the board.

(7) The board shall adopt rules to implement this section.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(ii), (1)(c)(iii); amd. Sec. 3, Ch. 595, L. 1993; (7)En. Sec. 5, Ch. 595, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 595 substituted present section establishing nondegradation policy for former section that read: "The board shall require:

(1) that any state waters whose existing quality is higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

(2) any industrial, public, or private project or development which would constitute a new source of pollution or an increased source of pollution to high-quality waters, referred to in subsection (1), to provide the degree of waste treatment necessary to maintain that existing high water quality." Amendment effective April 29, 1993.

Applicability: Section 10, Ch. 595, L. 1993, provided: "[This act] applies to all requests to degrade state waters filed with the department after [the effective date of this act]." Effective April 29, 1993.

Cross-References

Action for damage to water supply caused by metal mining operation, 82-4-355.

75-5-304. Adoption of standards — pretreatment, effluent, performance. The board shall adopt pretreatment standards for wastewater discharged into a municipal disposal system, adopt effluent standards as defined in 75-5-103, adopt toxic effluent standards and prohibitions, and establish standards of performance for new point source discharges.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(h).

75-5-305. Adoption of requirements for treatment of wastes — variance procedure — appeals. (1) The board may establish minimum requirements for the treatment of wastes.

(2) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(2)(b); amd. Sec. 1, Ch. 479, L. 1991.

75-5-306. Purer than natural unnecessary — dams. (1) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream as long as the minimum treatment requirements established under this chapter are met.

(2) "Natural" refers to conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil, and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams at July 1, 1971, are natural.

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975; R.C.M. 1947, 69-4801(2).

75-5-307. Hearings required for classification, formulation of standards, and rulemaking. (1) Before streams are classified or standards established or modified or rules made, revoked, or modified, the board shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and any rules proposed to be made, revoked, or modified shall be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the board believes may be affected by the proposed action. The council shall be given not less than 30 days prior to first publication to comment on the proposed action.

(2) At a hearing held under this section, the board shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The board may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under 75-5-611.

History: En. Sec. 134, Ch. 197, L. 1967; amd. Sec. 12, Ch. 21, L. 1971; R.C.M. 1947, 69-4814.

Cross-References

Montana Administrative Procedure Act — rulemaking, 2-4-302.

75-5-308. Short-term water authorizations — water quality standards. The department may authorize short-term exemptions from the water quality standards or short-term use that exceeds the water quality standards for the purposes of allowing construction, emergency environmental remediation, pesticide application, elimination of undesirable and nonnative aquatic species, and treatment of water for the protection of public health. The authorization must include conditions that minimize to the extent possible the magnitude of any standard violation and the length of time during which any standard violation may occur. The authorization conditions must maximize the protection of state waters by ensuring the maintenance of beneficial uses immediately after the term of the authorization. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

History: En. Sec. 2, Ch. 340, L. 1993.

75-5-309 and 75-5-310 reserved.

75-5-311. Local water quality districts — board approval — local water quality programs. (1) A county that establishes a local water quality district according to the procedures specified in Title 7, chapter 13, part 45, shall, in consultation with the department, undertake planning and information-gathering activities necessary to develop a proposed local water quality program.

(2) A county may implement a local water quality program in a local water quality district if the program is approved by the board after a hearing conducted under 75-5-202.

(3) In approving a local water quality program, the board shall determine that the program is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in protecting, preserving, and improving the quality of surface water and ground water, considering the administrative organization, staff, and financial and other resources available to implement the program.

(4) Subject to the board's approval, the commissioners and the governing bodies of cities and towns that participate in a local water quality district may adopt local ordinances to regulate the following specific facilities and sources of pollution:

(a) onsite waste water disposal facilities;

(b) storm water runoff from paved surfaces;

(c) service connections between buildings and publicly owned sewer mains;

(d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and

(e) internal combustion engine lubricants.

(5) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:

(a) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;

(b) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and

(c) provide for civil penalties not to exceed $1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed $500 per day of violation or imprisonment for not more than 30 days, or both.

(6) The local ordinances authorized by this section may not:

(a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;

(b) regulate any facility or source of pollution to the extent that the facility or source is:

(i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or

(iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

(7) If the boundaries of a district are changed after the board has approved the local water quality program for the district, the board of directors of the local water quality district shall submit a program amendment to the board and obtain the board's approval of the program amendment before implementing the local water quality program in areas that have been added to the district.

(8) The department shall monitor the implementation of local water quality programs to ensure that the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. If the department finds that a local water quality program is not adequate to protect, preserve, and improve the quality of the surface water and ground water or is not being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the board.

(9) If the board determines that a local water quality program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that the program is being administered in a manner inconsistent with Title 75, chapter 5, the board shall give notice and conduct a hearing on the matter.

(10) If after the hearing the board determines that the program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the board shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance.

(12) If the board finds that, because of the complexity or magnitude of a particular water pollution source, the control of the source is beyond the reasonable capability of a local water quality district or may be more efficiently and economically performed at the state level, the board may direct the department to assume and retain control over the source. A charge may not be assessed against the local water quality district for that source. Findings made under this subsection may be based on the nature of the source involved

or on the source's relationship to the size of the community in which it is located.

History: En. Sec. 24, Ch. 357, L. 1991.

Cross-References

Pesticides, Title 80, ch. 8.

Montana Agricultural Chemical Ground Water Protection Act, Title 80, ch. 15.

Part 4
Permits

75-5-401. Board rules for permits. (1) The board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits.

(2) The rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department insures that such permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of disposal systems for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(d), (1)(e); amd. Sec. 1, Ch. 412, L. 1991.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Department and board permits required for facility siting, 75-20-211.

Dairy products manufacturing plant — approval of air pollutant control by Department of Health and Environmental Sciences, 81-22-403.

Mining permit denied if water pollution not prevented, 82-4-227.

Mining reclamation plan to include water pollution control, 82-4-231.

75-5-402. Duties of department. The department shall:

(1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes into state waters, consistently with rules made by the board;

(2) examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(3) clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged; and

(4) establish as conditions to the issuance of permits for which a performance bond or other surety is filed under 75-5-405 certain reclamation requirements sufficient to prevent pollution of state waters during and after operation of the project or activity for which a permit is issued.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(a) thru (1)(c); amd. Sec. 2, Ch. 412, L. 1991.

75-5-403. Denial or modification of permit. (1) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder and he may request a hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to reverse or modify the action of the department. Such hearing shall be held within 30 days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit shall be effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, no order modifying his permit shall be effective until 20 days after he has received notice of the action of the board.

(2) This section does not apply to any modification made in permit conditions at the time of reissuance, but only to those modifications made in existing permits during their terms.

History: En. Sec. 14, Ch. 21, L. 1971; amd. Sec. 4, Ch. 455, L. 1975; R.C.M. 1947, 69-4807.1(1).

75-5-404. Suspension or revocation of permit — procedure. If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately if the department finds that the violation is likely to continue and will cause pollution, the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in 75-5-611, and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately unless the board directs otherwise.

History: En. Sec. 14, Ch. 21, L. 1971; amd. Sec. 4, Ch. 455, L. 1975; R.C.M. 1947, 69-4807.1(2).

75-5-405. Voluntary filing of performance bond — terms — hearing. (1) A person who holds or has applied for a permit pursuant to 75-5-401 may voluntarily file a performance bond or other surety with the department for an amount sufficient to enable the state to reclaim the land disturbed by the project or activity authorized by the permit in accordance with all permit requirements and as needed to prevent pollution of state waters.

(2) If the department determines that the bonding level does not represent the present cost of reclaiming the disturbed land according to the reclamation requirements specified in the permit and the present cost of

preventing pollution of state waters, the department shall notify the permittee and the permittee may modify the amount of the bond to accurately reflect the present cost.

(3) The department may not release all or any portion of a performance bond or other surety filed pursuant to this section until reclamation of the disturbed land has been completed to the satisfaction of the department and the department has determined that pollution of state waters has not occurred. The department may initiate bond forfeiture proceedings if the permittee fails to satisfactorily reclaim the disturbed land or prevent pollution of state waters.

(4) The department may not release a bond or other surety filed pursuant to this section until the public has been provided an opportunity for a hearing.

History: En. Sec. 3, Ch. 412, L. 1991.

Part 5
Financial Provisions

75-5-501. Board to control state matching funds for construction of water pollution control facilities. (1) The board shall control funds appropriated by the state for the purpose of providing matching funds to local governments for the construction of water pollution control facilities.

(2) The board shall adopt rules and establish standards for the use of such matching funds by local governments in the planning and construction of local water pollution control facilities.

(3) Funds appropriated under this section shall be used only to provide an increase in the aid from the federal government not otherwise obtainable and may not exceed 25% of the total cost of the project as participated in by the federal water pollution control administration.

History: En. Sec. 1, Ch. 165, L. 1969; amd. Sec. 61, Ch. 349, L. 1974; R.C.M. 1947, 69-4808.1.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-5-502. Board authorized to accept loans and grants. The board may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(2)(a).

75-5-503. Department authorized to accept loans and grants. The department may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(2).

75-5-504 through 75-5-506 reserved.

75-5-507. Water quality rehabilitation account — use — criteria. (1) There is a water quality rehabilitation account within the state special revenue fund established in 17-2-102.

(2) Fines and civil penalties collected for violations of any provision of this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter must be deposited in the water quality rehabilitation account pursuant to 75-5-634. The account is statutorily appropriated, as provided in 17-7-502, to the department.

(3) The department may spend funds deposited in the water quality rehabilitation account for the following purposes:

(a) to respond if wastes have been placed in a location where they are likely to cause pollution of state waters;

(b) to respond to emergency water pollution events, including spills and accidents, in an effort to repair, restore, and rehabilitate the affected state waters;

(c) to repair, restore, and rehabilitate state waters that are chronically or periodically adversely affected as a result of past pollution-causing events or activities; and

(d) whenever the department discovers or suspects that a pollution problem exists, to investigate or gather information that is necessary and appropriate to identify the existence, nature, origin, and extent of the pollution and to identify an appropriate response.

(4) The department may draw upon the account in order to take action under subsection (3) only if:

(a) (i) wastes have been placed in a location where they are likely to cause pollution of state waters or an emergency water pollution event has occurred and either the department is unable to identify a responsible party or the responsible party fails to clean up the wastes or to repair, restore, or rehabilitate the adversely affected state waters in a timely manner; and

(ii) the department determines that prompt action is necessary to prevent pollution of state waters, protect public health, minimize the extent of environmental damage, or minimize the overall economic cost of appropriately responding to the emergency situation; or

(b) the department has made diligent, good faith efforts to determine the identity of the person responsible for pollution resulting from past events or activities and has been unable to identify the person or take enforcement action as provided in Title 75, chapter 5, part 6.

History: En. Sec. 1, Ch. 600, L. 1991.

75-5-508 through 75-5-510 reserved.

75-5-511. Sewage system operators authorized to adopt charges and rates for users. (1) A municipality or other entity operating a sewage system may adopt a system of charges and rates to assure that each recipient of treatment works services within the municipality's jurisdiction or service area will pay its proportionate share of the costs of operation, maintenance, and replacement of any treatment works facilities or services provided by the municipality or other entity.

(2) A municipality or other entity operating a sewage system may require industrial users of its treatment works to pay to the municipality or other entity that portion of the cost of construction of the treatment works which is allocable to the treatment of such industrial user's wastes. The department may determine whether the payment required of the industrial user for the

portion of the cost of the construction of the treatment works is properly allocable to the treatment of the industrial user's wastes.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(1), (2).

75-5-512. Uses allowed for revenues. A municipality or other entity operating a sewage system may retain the amounts of the revenues derived from the payment of costs by industrial users of its treatment works services and expend such revenues, together with interest thereon, for:

(1) repayment to applicable agencies of government of any grants or loans made to the municipality or other entity operating a sewage system for construction of the treatment works;

(2) future expansion and reconstruction of the treatment works; and

(3) other municipal purposes.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(3).

75-5-513. Sewage system operators to keep records — department's power to inspect and audit. A municipality or other entity operating sewage systems shall keep records, financial statements, and books regarding its rates and charges and amounts collected on account of its treatment works and how such revenues are allocated. The department may inspect such records, financial statements, and books, audit them or cause them to be audited at such intervals as deemed necessary.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(4).

75-5-514. When board to establish rates and collect charges. (1) In the event a municipality or other entity operating sewage systems fails, neglects, or refuses when required by the department to adopt the system of charges and rates authorized by 75-5-511, the board may adopt a system of charges and rates as provided for in 75-5-511(1) and collect, administer, and apply such revenues for the purposes of 75-5-512.

(2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-5-513.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(5), (6).

75-5-515. Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or other entity operating sewage systems or, if applicable, the board shall consider the strength, volume, types, and delivery flow rate characteristics of the waste; the nature, location, and type of treatment works; the receiving waters; and such other factors as deemed necessary.

History: En. 69-4808.5 by Sec. 15, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.5.

75-5-516. Fees authorized for recovery — process — rulemaking. (1) The board shall by rule prescribe fees to be assessed by the department that are sufficient to cover the board's and department's documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

(2) The rules promulgated by the board under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be less than $250 or more than $5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple storm water discharge points may be assessed a lower fee for those points according to board rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be less than $250 and may not be more than $3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that a permit or authorization with multiple storm water discharge points may be assessed a lower fee for those points according to board rule. To the extent permitted under this limitation, the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

(i) the fees collected under subsection (2)(a);

(ii) state general fund appropriations for functions administered under this chapter; and

(iii) federal grants for functions administered under this chapter.

(3) For purposes of subsection (2), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(4) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed at the rate established under 15-31-510(3); or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (4)(a).

(5) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

(6) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(7) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection (6). The appeal to the board must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

(8) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (7), the undisputed portion of the fee must be paid to the department upon written request of the department.

(9) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(10) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111.

History: En. Sec. 1, Ch. 507, L. 1993.

Compiler's Comments

Applicability: Section 5(1), Ch. 507, L. 1993, provided that subsection (1) of 75-5-516 applies to all applications or petitions filed on or after October 1, 1993, and to all current and future holders of permits, licenses, or other authorizations described in subsection (1) of 75-5-516.

Section 5(2) authorized the Board of Health and Environmental Sciences to begin rulemaking prior to October 1, 1993.

Coordination: Section 8, Ch. 595, L. 1993, provided: "If House Bill No. 388 is passed and approved and if it requires the department of health and environmental sciences to impose and collect fees for authorizations to degrade state waters, then [section 6 of this act] is void." House Bill No. 388 was approved as Ch. 507, L. 1993, and included the imposition of fees for authorizations to degrade state waters in 75-5-516; therefore, sec. 6, Ch. 595, L. 1993, which enacted similar application fees, was void.

75-5-517. Deposition of water quality permit fees. (1) All fees collected under 75-5-516 must be credited to an account in the state special revenue fund.

(2) Money in the account may be used only to pay the department's cost in implementing the functions described in 75-5-516(1).

History: En. Sec. 2, Ch. 507, L. 1993.

Part 6

Enforcement, Appeal, and Penalties

Part Cross-References

Action for damage to water supply caused by metal mining operation, 82-4-355.

75-5-601. Cleanup orders. (1) The department shall issue orders to a person to clean up any material that he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and that may pollute them.

(2) If a unit of state or local government, including but not limited to a local board of health, county commission, governing body of a municipality, or state agency, has granted a permit or license to a person to discharge waste or has otherwise authorized an activity that involves the placement of waste and the department has reason to believe that the waste is causing or is likely to cause pollution of state waters, the department may issue an order to the unit of state or local government to take measures to ensure that the wastes causing or likely to cause the pollution are cleaned up.

(3) The department may include in an order issued to a county commission pursuant to subsection (2) a request that the commission create a sewer district in the geographic area affected by the order for the purpose of establishing a public sewer system in accordance with the petition and election procedures provided by 7-13-2204 and 7-13-2208 through 7-13-2214.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(f); amd. Sec. 1, Ch. 292, L. 1991.

75-5-602. Power to require monitoring. In order to carry out the objectives of this chapter and to effectively monitor the discharge of sewage, industrial wastes, and other wastes into state waters, the department may require the owner or operator of any point source, or the owner or operator of any facility that discharges into a municipal sewage system and to which pretreatment standards promulgated under this chapter apply, to:

(1) establish and maintain records;

(2) make reports;

(3) install, use, and maintain monitoring equipment or methods, including biological monitoring techniques;

(4) sample effluents using specified monitoring methods at designated locations and intervals;

(5) provide other information as may be reasonably required by the department.

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(1).

75-5-603. Power to inspect. The authorized representative of the department, upon presentation of his credentials, may at reasonable times enter upon any public or private property to:

(1) investigate conditions relating to pollution of state waters or violations of permit conditions;

(2) have access to and copy any records required under this chapter;

(3) inspect any monitoring equipment or method required under 75-5-602(3); and

(4) sample any effluents which the owner or operator of such source is required to sample under 75-5-602(4).

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(2).

Cross-References

Searches and seizures — right of private individual to be secure, Art. II, sec. 11, Mont. Const.

75-5-604. Information obtained to relate to standards. Any records, reports, or information obtained under 75-5-602 and 75-5-603 shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards.

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(3).

75-5-605. Prohibited activity. (1) It is unlawful to:

(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

(d) cause degradation of state waters without authorization pursuant to 75-5-303;

(e) violate any order issued pursuant to this chapter; or

(f) violate any provision of this chapter.

(2) It is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters.

History: En. Sec. 126, Ch. 197, L. 1967; amd. Sec. 5, Ch. 21, L. 1971; amd. Sec. 3, Ch. 455, L. 1975; amd. Sec. 2, Ch. 444, L. 1977; R.C.M. 1947, 69-4806; amd. Sec. 2, Ch. 337, L. 1993; amd. Sec. 4, Ch. 595, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 337 inserted (1)(c) prohibiting construction of a sewage lagoon less than 500 feet from an existing water well; and made minor changes in style.

Chapter 595 inserted (1)(d) prohibiting degradation of state waters without authorization. Amendment effective April 29, 1993.

Applicability: Section 10, Ch. 595, L. 1993, provided: "[This act] applies to all requests to degrade state waters filed with the department after [the effective date of this act]." Effective April 29, 1993.

Cross-References

Prevention of discharge of waste products from vessels, 23-2-521, 23-2-522.

Dead animals — unlawful disposition, 75-10-213.

Action for damage to water supply caused by metal mining operation, 82-4-355.

75-5-606 through 75-5-610 reserved.

75-5-611. Violation of chapter — administrative actions and penalties — notice and hearing. (1) When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The notice letter must state:

(a) the provision of statute, rule, permit, or approval alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the specific nature of corrective action that the department requires;

(d) as applicable, the amount of the administrative penalty that will be assessed by order under subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and

(e) as applicable, the time within which the corrective action is to be taken or the administrative penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions of subsection (1) have been complied with.

(2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided under subsection (1) if the department's action:

(i) does not involve assessment of an administrative penalty; or

(ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is violating 75-5-605.

(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).

(3) In a notice and order given under subsection (1), the department may require the alleged violator to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner than 15 days after service of the notice and order, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(4) If the department does not require an alleged violator to appear before the board for a public hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing and must be filed with the department no later than 30 days after service of a notice and order under subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to the board under Title 2, chapter 4, part 6, is waived.

(5) If a contested case hearing is held under this section, it must be public and must be held in the county in which the violation is alleged to have occurred or in Lewis and Clark County.

(6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

(c) If the order requires abatement or control of pollution, the board shall state the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.

(d) If the order requires payment of an administrative penalty, the board shall explain how it determined the amount of the administrative penalty.

(e) If the board determines that a violation has not occurred, it shall declare the department's notice void.

(7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which petition the board may grant for good cause shown.

(8) Instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

(9) (a) An action initiated under this section may include an administrative penalty of not more than $10,000 for each day of each violation; however, the maximum penalty may not exceed $100,000 for any related series of violations.

(b) Administrative penalties collected under this section must be deposited in the general fund.

(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.

(d) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

History: En. Sec. 13, Ch. 21, L. 1971; amd. Sec. 65, Ch. 349, L. 1974; amd. Sec. 8, Ch. 455, L. 1975; R.C.M. 1947, 69-4820; amd. Sec. 2, Ch. 504, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 504 in (1), after "rule", substituted "adopted" for "made", after "under" substituted "this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter" for "it", in two places, after "notice", inserted "letter", and near end, before "mail", inserted "certified"; in (1)(a), after "provision", inserted "of statute, rule, permit, or approval"; in (1)(c), before "nature", inserted "specific"; inserted (1)(d) requiring notice letter to state amount of administrative penalty for lack of corrective action; in (1)(e), at beginning of first sentence, inserted "as applicable", before "action" inserted "corrective", and after "taken" inserted "or the administrative penalty will be assessed", in second sentence, before "mail", inserted "certified" and at end substituted "receipt" for "mailing", and inserted third sentence relating to assessment of administrative penalty; inserted (2) authorizing Department to issue administrative notice and order in lieu of notice letter; in (3), in two places, and in (4), after "notice", inserted "and order"; in (4), at end of second sentence, substituted "subsection (2)" for "subsection (1)" and inserted fourth sentence relating to waiver of contested case appeal; in (5), near beginning before "hearing", inserted "contested case", after "and must" deleted "if the board considers it practicable", and at end, after "occurred", inserted "or in Lewis and Clark County"; in (6)(a), after "hearing", deleted "or on failure of an alleged violator to make a timely request for a hearing", after "board" deleted "may", and inserted "shall make findings and conclusions that explain its decision"; in (6)(b), at beginning, inserted "If the board determines that a violation has occurred, it shall also" and at end, after "pollution", inserted "the assessment of administrative penalties, or both"; in (6)(c), at beginning, inserted "If the order requires abatement or control of pollution, the board"; inserted (6)(d) requiring Board to explain determination of administrative penalty; inserted (6)(e) requiring Board to declare Department's notice void if it determines no violation has occurred; in (8), at beginning, deleted "In addition to or"; inserted (9) relating to penalty amounts and application of the Montana Administrative Procedure Act; and made minor changes in style.

Cross-References

Montana Administrative Procedure Act — contested case hearings, Title 2, ch. 4, part 6.

75-5-612. Additional sanctions authorized. In addition to all other remedies created by this chapter, the department is authorized to take appropriate enforcement action on its own initiative to prevent, abate, and control:

(1) the pollution of state waters;

(2) any violation of a condition or limitation imposed by a permit issued under 75-5-402(1); or

(3) any violation of rules relating to pretreatment standards.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(1).

75-5-613. Compliance orders. In furtherance of 75-5-612, a person violating a condition, limitation, standard, or other requirement established pursuant to this chapter may be served with a compliance order issued by the department. The order must specify the condition, limitation, standard, or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard, or other requirement that has been violated. The compliance order issued under this section shall be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(2).

Cross-References

Service of process, Rules 4D and 5, M.R.Civ.P. (see Title 25, ch. 20).

75-5-614. Injunctions authorized. (1) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation which would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of the county in which the defendant is located or resides or is doing business or any county where a violation occurs or is threatened if the defendant cannot be located in Montana, and the court shall have jurisdiction to restrain the violation and to require compliance.

(2) The department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction.

History: (1)En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; Sec. 69-4820.1, R.C.M. 1947; (2)En. Sec. 19, Ch. 21, L. 1971; amd. Sec. 68, Ch. 349, L. 1974; amd. Sec. 12, Ch. 455, L. 1975; Sec. 69-4825, R.C.M. 1947; R.C.M. 1947, 69-4820.1(3), 69-4825.

Cross-References

Injunctions — jurisdiction of Supreme Court, 3-2-205.

Injunctions, Title 27, ch. 19.

75-5-615. Violators subject to penalties. (1) A person found to be in violation of a condition, limitation, standard, or other requirement established pursuant to 75-5-612 through 75-5-614 is subject to the penalty provisions of 75-5-631, 75-5-632, 75-5-633, and 75-5-635.

(2) For the purpose of this section, the term "person" means, in addition to the definition contained in 75-5-103, any responsible corporate officer.

History: **En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(4), (5); amd. Sec. 6, Ch. 68, L. 1979.**

75-5-616. Enforcement of permits and chapter. The department shall take such actions as are authorized or required under 75-5-612 through 75-5-615 to insure that the terms and conditions of issued permits are complied with and to insure that violations of this chapter are appropriately prosecuted.

History: **En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(g).**

75-5-617 through 75-5-620 reserved.

75-5-621. Emergencies. (1) Notwithstanding any other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under it which, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department shall order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order shall be effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order shall conform to the requirements of 75-5-611(1) so far as practicable. The notice shall indicate that the order is an emergency order.

(3) Upon issuing such an order, the department shall fix a place and time for a hearing before the board, not later than 5 days thereafter unless the person to whom the order is directed shall request a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board shall be accompanied by the statement specified in 75-5-611(5). An action for review of the order of the board may be initiated in the manner specified in 75-5-641. The initiation of such an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section.

History: **En. Sec. 18, Ch. 21, L. 1971; amd. Sec. 11, Ch. 140, L. 1977; R.C.M. 1947, 69-4824.**

Cross-References

Energy emergency — power of Governor to suspend pollution control standards, 90-4-310.

75-5-622. Additional emergency powers. Notwithstanding any other provisions of this chapter, the department, upon receipt of evidence that a pollution source or combination of sources is endangering the health, welfare, or livelihood of a person, may bring suit in the district court of any county in which the defendant is located or resides or is doing business to enjoin the discharge of pollutants causing or contributing to the alleged pollution.

History: En. 69-4824.1 by Sec. 7, Ch. 506, L. 1973; R.C.M. 1947, 69-4824.1.

75-5-623 through 75-5-630 reserved.

75-5-631. Civil penalties — injunctions not barred. (1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter shall be subject to a civil penalty not to exceed $25,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain any enforcement proceedings in the name of the state.

(4) When seeking penalties under this section, the department shall take into account the following factors in determining an appropriate settlement, if any, subsequent to the filing of a complaint:

(a) the nature, circumstances, extent, and gravity of the violation; and

(b) with respect to the violator, his ability to pay, any prior history of such violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, and any other matters as justice may require.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(1), (3); amd. Sec. 1, Ch. 644, L. 1991.

Cross-References

Injunctions, Title 27, ch. 19.

75-5-632. Criminal penalties. A person who willfully or negligently violates 75-5-605 or any pretreatment standard established pursuant to this chapter is guilty of an offense and subject to a fine not to exceed $25,000 per day of violation or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, subsequent convictions shall subject a person to a fine of not more than $50,000 per day of violation or imprisonment for not more than 2 years, or both.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(2).

Cross-References

Execution of a criminal fine, 46-19-102.

75-5-633. Penalties for false statements and falsifying monitoring. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall upon conviction be punished by a fine of not more than $25,000 or by imprisonment for not more than 6 months, or both.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(6); amd. Sec. 2, Ch. 644, L. 1991.

75-5-634. Disposition of fines and civil penalties. (1) Except as provided in subsections (2) and (3), fines and civil penalties collected, except those collected in a justice's court, must be deposited into the water quality rehabilitation account provided in 75-5-507.

(2) A maximum of $20,000 in fines and civil penalties may be deposited in the water quality rehabilitation account in any fiscal year. Fines and penalties in excess of $20,000 must be deposited in the general fund.

(3) Whenever the amount of money in the water quality rehabilitation account exceeds $100,000, all subsequent fines and civil penalties must be deposited in the general fund.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(5); amd. Sec. 43, Ch. 557, L. 1987; amd. Sec. 3, Ch. 600, L. 1991.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

75-5-635. Costs and expenses — recovery by department — deposit in water quality rehabilitation account. (1) In a civil action initiated by the department under this chapter, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation and any expense incurred by the state in removing, correcting, or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants.

(2) Any costs and expenses recovered by the department under subsection (1) for actions that the department financed with money from the water quality rehabilitation account authorized in 75-5-507 must be deposited in the water quality rehabilitation account.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(7); amd. Sec. 4, Ch. 600, L. 1991.

75-5-636. Action by other parties. A person, association, corporation, or agency of the state or federal government may apply to the department protesting a violation of this chapter. The department shall make an investigation and make a written report to the person, association, corporation, or agency which made the protest. If a violation is established by the investigation of the department, appropriate enforcement action shall be taken.

History: En. Sec. 20, Ch. 21, L. 1971; amd. Sec. 69, Ch. 349, L. 1974; amd. Sec. 13, Ch. 455, L. 1975; R.C.M. 1947, 69-4826.

Cross-References

Mandamus, Title 27, ch. 26.

75-5-637 through 75-5-640 reserved.

75-5-641. Appeals from board orders — review by district court. (1) An appeal of an order of the board shall be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if he shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) The initiation of an action for review or the taking of an appeal does not stay the effectiveness of any order of the board unless the court finds that there is probable cause to believe:

(a) that refusal to grant a stay will cause serious harm to the affected party; and

(b) that any violation found by the board will not continue or, if it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board.

History: En. Sec. 15, Ch. 21, L. 1971; amd. Sec. 66, Ch. 349, L. 1974; R.C.M. 1947, 69-4821.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

Montana Rules of Civil Procedure — intervention, Rule 24, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

Parts 7 through 10 reserved

Part 11

Wastewater Treatment Revolving Fund

75-5-1101. Short title. This part may be cited as the "Wastewater Treatment Revolving Fund Act".

History: En. Sec. 1, Ch. 678, L. 1989.

75-5-1102. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to costs of servicing loans and issuing debt; program start-up costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a wastewater treatment works project, all capital costs incurred or to be incurred by a municipality or a private concern, including but not limited to engineering, financing and other fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated thereunder.

(3) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

(4) "Loan" means a loan of money from the revolving fund to a municipality or a private concern.

(5) "Municipality" means any city, town, or other local government unit having authority to own and operate a sewage system and wastewater treatment works.

(6) "Private concern" means an individual or other entity eligible for a loan or loans for a pollution control project for a nonpoint source under section 319 of the federal act.

(7) "Program" means the wastewater treatment works revolving loan program established by this part.

(8) "Project" means a wastewater treatment works or part of a wastewater treatment works for which a municipality or private concern makes an application for a loan or other financial assistance.

(9) "Revolving fund" means the fund established by 75-5-1106.

History: En. Sec. 2, Ch. 678, L. 1989.

Cross-References

Water quality generally — chapter definitions, 75-5-103.

75-5-1103. Wastewater treatment works revolving loan program. There is a program under which the state may provide financial assistance to municipalities and private concerns to finance or refinance part or all of the cost of projects. The program must be administered in accordance with this part and the federal act.

History: En. Sec. 3, Ch. 678, L. 1989.

75-5-1104. Authorization of agreement — content. (1) The department may enter into a capitalization grant agreement or other agreement with the United States environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into the agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in 75-5-1106;

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by 75-5-1106 on or before the date on which each quarterly federal grant payment is made to the state;

(c) provide financial assistance to municipalities and private concerns in accordance with this part in an amount equal to 120% of the amount of each grant payment within a time period not to exceed 1 year after receipt of a grant;

(d) expend all funds in the revolving fund in an expeditious and timely manner;

(e) use all funds deposited in the revolving fund as a result of the capitalization grant to ensure progress, as determined by the governor of the state, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(f) expend each quarterly grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenues of the state;

(g) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(h) as a condition of making a loan or providing other financial assistance from the revolving fund, require that the municipality or private concern will maintain project accounts in accordance with generally accepted government accounting standards;

(i) make annual reports to the environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of this part.

History: En. Sec. 4, Ch. 678, L. 1989.

75-5-1105. Rulemaking. The board and the board of natural resources and conservation may adopt rules within their respective authorities established within the provisions of this part, including rules:

(1) prescribing the form and content of applications for loans and refinancing agreements;

(2) governing the application of the criteria for awarding loans;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements; and

(4) establishing ceilings on the amount of individual loans to be made to municipalities and private concerns, if considered appropriate and necessary for the successful administration of the program.

History: En. Sec. 9, Ch. 678, L. 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

75-5-1106. Revolving fund. (1) There is established in the state treasury a separate account designated as the wastewater treatment works revolving fund. There are established in the revolving fund as subaccounts a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account, all amounts received by the state pursuant to the federal act as capitalization grants for a state revolving fund to assist construction of wastewater treatment works and grants or transfers of grants received under subchapter II of the federal act for construction of wastewater treatment works;

(b) the state allocation account, the net proceeds of bonds of the state issued pursuant to 75-5-1121 and other money appropriated by the legislature;

(c) the administration account, 4%, or the maximum amount allowed by the federal act, of the capitalization grant award for payment of administrative costs;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and

(e) the debt service account, the interest portion of loan repayments.

(3) Each loan made as authorized by 75-5-1113 must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been

issued pursuant to 75-5-1121 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds.

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund as it considers necessary to account for the program money and to ensure compliance with the federal act and this part.

History: En. Sec. 5, Ch. 678, L. 1989; amd. Sec. 1, Ch. 788, L. 1991.

75-5-1107. Uses of revolving fund. Money in the revolving fund may be used to:

(1) make loans to municipalities and private concerns to finance all or a portion of the cost of a project;

(2) buy or refinance debt obligations of municipalities that were issued to finance projects within the state at or below market rates, provided that the obligations were incurred after March 7, 1985;

(3) guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;

(4) provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;

(5) provide loan guarantees for similar revolving funds established by municipalities;

(6) earn interest on fund accounts; and

(7) pay reasonable administrative costs of the revolving loan program not to exceed 4%, or the maximum amount allowed under the federal act, of all federal grant awards to the fund.

History: En. Sec. 6, Ch. 678, L. 1989.

75-5-1108. Statutory appropriation. Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for the purposes of making loans to municipalities and private concerns and paying debt service on obligations. Money in the special administrative costs account authorized by 75-5-1113 is subject to legislative appropriation constraints, and expenditures from this account must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

History: En. Sec. 12, Ch. 678, L. 1989.

75-5-1109 and 75-5-1110 reserved.

75-5-1111. Applications. (1) The department shall, after consultation with the department of natural resources and conservation, establish loan application procedures, including forms for the applications. Each application for a loan to finance construction of a project must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source or sources of revenue proposed to be used to repay the loan;

(f) if the applicant is a municipality, a statement as to whether, at the time of application, there are any outstanding bonds, notes, or other obligations of the municipality that were issued or incurred to finance any part of the municipality's sewage system and, if so, a description of the bonds, notes, or other obligations; and

(g) any other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to engineering reports, economic feasibility studies, and legal opinions.

(2) Each application for a loan to refinance a project, including a purchase of outstanding obligations issued by a municipality to finance a project in whole or in part, must include:

(a) a reasonably detailed description of the project;

(b) a schedule of the cost of the project;

(c) the date on which construction of the project began;

(d) a description of the bonds, notes, or other obligations to be refinanced and of any other notes, bonds, or obligations issued or incurred to finance any part of the municipality's sewage system; and

(e) any other information that the department or the department of natural resources and conservation may require.

(3) Each application for financial assistance in the form of a guaranty or the purchase of insurance for a municipal obligation must include all items required by subsection (1) and any other information the department may require.

History: En. Sec. 7, Ch. 678, L. 1989.

75-5-1112. Evaluation of applications. After consultation with the department of natural resources and conservation, the department shall evaluate and annually rank applications for loans and other financial assistance. In ranking the applications, the department must consider the following factors:

(1) the ability of the municipality or private concern to pay the costs of the project without the requested financial assistance;

(2) the amount available for financial assistance in the revolving fund;

(3) the total amount requested by other applications that have been received or that are likely to be received;

(4) the need for and benefit to be derived from the project;

(5) in the case of an application to refinance an outstanding obligation, the benefit of refinancing as measured by a decrease in interest rates and whether the refinancing permits the construction of an additional project by the municipality; and

(6) any other criteria that the department determines appropriate, considering the purposes of the federal act and the program.

History: En. Sec. 8, Ch. 678, L. 1989.

75-5-1113. Loans. (1) Upon approval of an application by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private concern to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private concern complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to assure sufficient revenues to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality's obligation;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than 20 years;

(c) agreeing to maintain proper financial records in accordance with recognized government accounting procedures and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(g) complying with plan and specification requirements for public wastewater systems established by the board; and

(h) providing for proper construction inspection and project management.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date.

(3) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-5-1121.

(a) The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.

(b) The rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loan. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate established for any other loan.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or private concern, in a form prescribed or approved by the department of natural resources and conservation, except

that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private concern. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-5-1106; or

(b) in the administration account. Money deposited in the special administrative costs account or the administration account must be used for the payment of administrative costs of the program.

History: En. Sec. 10, Ch. 678, L. 1989; amd. Sec. 2, Ch. 788, L. 1991.

Cross-References

Montana Environmental Policy Act, Title 75, ch. 1, parts 1 and 2.

75-5-1114 through 75-5-1120 reserved.

75-5-1121. Authorization of bonds — appropriation of proceeds. (1) The board of examiners is authorized, upon request of the department of natural resources and conservation, to issue and sell bonds of the state in an aggregate principal amount not exceeding $10 million to provide money for the revolving loan program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received or amounts to be used to pay interest on the bonds or the costs of issuing the bonds, are appropriated to the state allocation account of the wastewater treatment works revolving fund. Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account. Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of sections 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

(4) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the powers of a trustee inside or outside the state.

(a) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(b) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, provide for the rights of the bondholders, and ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(c) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state.

History: En. Sec. 11, Ch. 678, L. 1989; amd. Sec. 3, Ch. 788, L. 1991.

75-5-1122. Creation of debt. The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed $10 million and the issuance and sale of general obligation bonds in this amount for the purpose of providing the state's share of the program.

History: En. Sec. 13, Ch. 678, L. 1989.

CHAPTER 6

PUBLIC WATER SUPPLIES, DISTRIBUTION, AND TREATMENT

Part 1 — Public Water Supply

75-6-101. Policy.
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75-6-104. Duties of department.
75-6-105. Records required for wells drilled to supply water to public.
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75-6-116 through 75-6-120 reserved.
75-6-121. Delegation of review of small public water and sewer construction.

Chapter Cross-References

Metropolitan sanitary and storm sewer systems, Title 7, ch. 13, part 1.

County water and sewer districts, 7-13-2203.

Municipal sewage and/or water systems, Title 7, ch. 13, part 43.

Cities and towns — water supplies and regulation, Title 7, ch. 13, part 44.

Water treatment plant operators, Title 37, ch. 42.

Licensing of plumbers, Title 37, ch. 69, part 3.

Applicability of public water supply laws to subdivisions, 76-4-131.

Water and ground water — policy of state, 85-1-101.

Part 1
Public Water Supply

75-6-101. Policy. It is the public policy of this state to protect, maintain, and improve the quality and potability of water for public water supplies and domestic uses.

History: En. Sec. 140, Ch. 197, L. 1967; R.C.M. 1947, 69-4901.

Cross-References

Exclusion of municipalities — appropriation for public water supplies, 85-2-317.

75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Board” means the board of health and environmental sciences provided for in 2-15-2104.

(2) “Community water system” means any public water supply system that serves at least 10 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(3) “Contamination” means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(4) “Department” means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(5) “Drainage” means rainfall, surface, and subsoil water.

(6) “Industrial waste” means any waste substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

(7) “Maximum contaminant level” means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system.

(8) “Other waste” means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(9) “Person” means any individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

(10) “Pollution” means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or

other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(11) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 10 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.

(12) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

(13) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations at Title 40, CFR, Parts 141 and 142.

(14) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(15) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground.

(16) "Transient noncommunity water system" means any public water supply system that is not a community water system and that serves persons on a transient basis.

History: En. Sec. 141, Ch. 197, L. 1967; amd. Sec. 1, Ch. 67, L. 1974; amd. Sec. 1, Ch. 556, L. 1977; R.C.M. 1947, 69-4902; amd. Sec. 1, Ch. 556, L. 1979; amd. Sec. 2, Ch. 312, L. 1989; amd. Sec. 1, Ch. 645, L. 1991.

Cross-References

Water treatment plants and distribution systems, 37-42-101, 75-5-401, 75-5-403.

75-6-103. Duties of the board. (1) The board has general supervision over all state waters which are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply system;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water supply systems;

(f) the siting, construction, operation, and modification of a public water supply system or public sewage system;

(g) the review of financial viability of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(h) the collection and analysis of samples of water used for drinking or domestic purposes;

(i) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(j) administrative enforcement procedures and administrative penalties authorized under this part; and

(k) any other requirement necessary for the protection of public health as described in this part.

(3) The board may issue orders necessary to fully implement the provisions of this part.

History: En. Sec. 142, Ch. 197, L. 1967; amd. Sec. 70, Ch. 349, L. 1974; amd. Sec. 2, Ch. 556, L. 1977; R.C.M. 1947, 69-4903; amd. Sec. 2, Ch. 556, L. 1979; amd. Sec. 2, Ch. 197, L. 1989; amd. Sec. 2, Ch. 645, L. 1991.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-6-104. Duties of department. The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their quality and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of assuring its quality;

(4) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health wherever appropriate for the performance of surveys and inspections under the provisions of this part.

History: **En. Sec. 143, Ch. 197, L. 1967; amd. Sec. 71, Ch. 349, L. 1974; amd. Sec. 3, Ch. 556, L. 1977; R.C.M. 1947, 69-4904; amd. Sec. 3, Ch. 556, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 645, L. 1991.**

Cross-References

Approval of water supply required for dairy products manufacturing plants, 81-22-403.

75-6-105. Records required for wells drilled to supply water to public. Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and character of different strata and other information prescribed by the board. Data shall be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times.

History: **En. Sec. 145, Ch. 197, L. 1967; R.C.M. 1947, 69-4906.**

Cross-References

Water well contractors, Title 37, ch. 43.

75-6-106. Licensing of laboratories. (1) No laboratory analysis of water taken from a public water supply system or any report of such an analysis required by this part or a rule adopted under this part may be accepted by the department or board unless the analysis or report is made by the laboratory of the department or by a laboratory licensed by the department for such purposes. The department shall issue a license to any laboratory that can meet criteria for licensing established in the rules adopted by the board.

(2) An application for a license under this section shall be made on forms furnished by the department.

(3) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

History: **En. 69-4905.2 by Sec. 5, Ch. 556, L. 1977; R.C.M. 1947, 69-4905.2; amd. Sec. 4, Ch. 556, L. 1979.**

75-6-107. Variances and exemptions. The department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the board. A variance or exemption granted pursuant to this section shall be accompanied by a compliance plan specifying a time schedule for compliance. A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

History: **En. 69-4905.1 by Sec. 4, Ch. 556, L. 1977; R.C.M. 1947, 69-4905.1; amd. Sec. 5, Ch. 556, L. 1979.**

Cross-References

Montana Administrative Procedure Act — contested case proceedings, Title 2, ch. 4, part 6.

75-6-108. Board to prescribe fees — opportunity for appeal. (1) The board shall by rule prescribe fees to be assessed annually by the department on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system is no more than $2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than $2 for each service connection to the public water supply system, although the minimum fee for any system is $100, except that the fee for a transient noncommunity water system is $50.

(2) Public water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111.

(3) The board shall by rule prescribe fees to be assessed by the department on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans and specifications.

(4) Fees collected pursuant to this section must be deposited in the public drinking water special revenue fund established in 75-6-115.

(5) (a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice provided for in subsection (5)(a).

History: En. Sec. 4, Ch. 645, L. 1991.

Cross-References

Montana Administrative Procedure Act — adoption of Rules, Title 2, ch. 4, part 3.

75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or his agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time, which must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) An action initiated under this part may include an administrative penalty not to exceed $500 for each day of violation. Administrative penalties collected under this section must be deposited in the public drinking water special revenue fund established in 75-6-115.

(7) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section.

History: En. Sec. 6, Ch. 645, L. 1991.

75-6-110 reserved.

75-6-111. Appeal from rule or standard — injunction to require compliance. (1) A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court, except as otherwise provided in 75-6-109. While the appeal is pending, the rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this part or a rule or order issued as authorized by this part. The court may award the department costs and expenses incurred in investigating and abating the violation. The department may also initiate an action to collect a criminal penalty as provided in 75-6-113 or a civil penalty as provided in 75-6-114.

History: En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977; R.C.M. 1947, 69-4907(1), (2); amd. Sec. 7, Ch. 68, L. 1979; amd. Sec. 1, Ch. 412, L. 1985; amd. Sec. 5, Ch. 645, L. 1991.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

Costs, Title 25, ch. 10.

75-6-112. Prohibited acts. A person may not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into any state waters or on the banks of any state waters or into any abandoned or

operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

(3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of any kind on any watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) commence construction, alteration, or extension of any system of water supply, water distribution, sewer, drainage, wastewater, or sewage disposal before he submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications;

(5) operate or maintain any public water supply system which exceeds a maximum contaminant level established by the board unless he has been granted or has an application pending for a variance or exemption pursuant to this part;

(6) violate any provision of this part or rule adopted under this part; or

(7) violate any condition or requirement of an approval issued pursuant to this part.

History: En. Sec. 144, Ch. 197, L. 1967; R.C.M. 1947, 69-4905; amd. Sec. 6, Ch. 556, L. 1979; amd. Sec. 1, Ch. 230, L. 1989.

Cross-References

Plan for sewage system or wastewater disposal project — seal of engineer included, 18-2-122.

Nuisance, Title 27, ch. 30.

Action to recover damages to water supply, 75-20-405.

75-6-113. Penalty. Any person violating this part or any rule or order of the board or department issued under the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500. Each day upon which a violation of this part occurs shall be considered a separate offense.

History: En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977; R.C.M. 1947, 69-4907(3).

Cross-References

Execution of a criminal fine, 46-19-102.

75-6-114. Civil penalty. (1) A person who violates this part or a rule, order, or condition of approval issued under this part is subject to a civil penalty not to exceed $10,000.

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate remedy.

(4) Civil penalties collected pursuant to this section must be deposited in the public drinking water special revenue fund established in 75-6-115.

History: En. Sec. 7, Ch. 645, L. 1991.

75-6-115. Public drinking water special revenue fund. (1) There is a public drinking water special revenue fund within the state special revenue fund established in 17-2-102. There are established in the public drinking water special revenue fund an operator training account and a public drinking water program account.

(2) There must be credited to:

(a) the operator training account all administrative and civil penalties collected under 75-6-109 and 75-6-114; and

(b) the public drinking water program account revenues from fees assessed, collected, and allocated pursuant to 75-6-108.

(3) Funds from the operator training account may be used only to finance public water supply system and public sewage system operator training programs.

(4) Funds from the public drinking water program account may be used only to pay department costs in implementing the public drinking water supply program, as described in this part.

History: En. Sec. 8, Ch. 645, L. 1991.

75-6-116 through 75-6-120 reserved.

75-6-121. Delegation of review of small public water and sewer construction. (1) If a local government requests a delegation and the appropriate division of the local government has established satisfactory review programs, the department may delegate to the division of local government review of:

(a) small public water and sewer systems; and

(b) extensions or alterations of existing public water and sewer systems that involve 50 or fewer connections.

(2) The board may adopt rules regarding the delegation of review authority to divisions of local government.

History: En. Sec. 1, Ch. 312, L. 1989.

CHAPTER 7

AQUATIC ECOSYSTEM PROTECTIONS

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Chapter Cross-References

Wetlands Protection Advisory Council, 2-15-3405.

Smith River Management Act, Title 23, ch. 2, part 4.

Proceeds from waterfowl stamp for wetlands protection, 87-2-412.

Part 1

Streambeds

Part Cross-References

Ferrykeepers to keep banks of streams at landings in good repair, 7-14-2826.

Fish, Wildlife, and Parks Commission to adopt rules for protection of streams from adverse recreational use, 23-2-302.

Construction of pipelines across streams, 69-13-103.

Construction of railroads across streams, 69-14-532.

Watercourses — accretion and reclamation of banks, Title 70, ch. 18, part 2.

Failure to issue mining permit — protection of streambeds, Title 82, ch. 4, part 2.

Metal mine reclamation, Title 82, ch. 4, part 3.

Water conservancy districts — flow regulation, 85-9-102.

Fishing access sites and frontages — funds for recreational use, 87-1-605.

Stream protection of fish and wildlife resources — plans for construction or hydraulic projects, Title 87, ch. 5, part 5.

75-7-101. Short title. This part may be cited as "The Natural Streambed and Land Preservation Act of 1975".

History: En. 26-1510 by Sec. 1, Ch. 463, L. 1975; R.C.M. 1947, 26-1510.

75-7-102. Policy. It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana.

History: En. 26-1511 by Sec. 2, Ch. 463, L. 1975; R.C.M. 1947, 26-1511.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Beneficial use defined, 85-2-102.

Adjudication of water rights, Title 85, ch. 2, part 2.

Policy for protection of fish and wildlife resources in streams, 87-5-501.

75-7-103. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means any person presenting notice of a project to the supervisors.

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means a conservation district under Title 76, chapter 15, in which the project will take place; a grass conservation district under Title 76, chapter 16, where no conservation district exists, or the board of county commissioners where a district does not exist.

(4) "Person" means any natural person, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502.

(5) (a) "Project" means a physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of 75-7-102.

(b) Project does not include customary and historic maintenance and repair of existing irrigation facilities:

(i) that do not significantly alter or modify the stream in contravention of 75-7-102; or

(ii) for which a plan of annual operation has been submitted to and approved by the district. The plan is subject to future review and approval by the district at its option. Any modification to the plan must have prior approval of the district.

(6) "Stream" means any natural perennial-flowing stream or river, its bed and immediate banks.

(7) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or his representative.

History: En. 26-1512 by Sec. 3, Ch. 463, L. 1975; R.C.M. 1947, 26-1512; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 551, L. 1987.

Cross-References

Composition of Board of County Commissioners, 7-4-2101.

Conservation district supervisors, Title 76, ch. 15.

Grass Conservation Act, Title 76, ch. 16.

75-7-104. Vested water rights preserved. This part shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

History: En. 26-1516 by Sec. 7, Ch. 463, L. 1975; R.C.M. 1947, 26-1516.

Cross-References

Existing water rights protected, Art. IX, sec. 3, Mont. Const.

75-7-105. Application of floodplain management. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 76, chapter 5, parts 1 through 4, floodway management and regulation, where designated floodplains or designated floodways have been established in accordance with that chapter.

History: En. 26-1519 by Sec. 10, Ch. 463, L. 1975; R.C.M. 1947, 26-1519.

75-7-106. Junked motor vehicles as reinforcement prohibited — penalty. (1) It is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between high-water channel banks of any stream or to reinforce banks of a stream with such junked motor vehicles or the body portion of such junked motor vehicles.

(2) A person who willfully violates subsection (1) is guilty of a misdemeanor and upon conviction shall be fined not to exceed $250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(3) A person who violates subsection (1) shall be subject to a civil penalty of not more than $50. Each day upon which a violation occurs is a separate violation.

History: (1)En. 69-6811 by Sec. 1, Ch. 112, L. 1975; amd. Sec. 19, Ch. 140, L. 1977; Sec. 69-6811, R.C.M. 1947; (2), (3)En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977; Sec. 69-6812, R.C.M. 1947; R.C.M. 1947, 69-6811, 69-6812(part).

Cross-References

Ordinary high-water mark defined, 23-2-301.

Venue for action arising on stream, 25-2-124.

Execution of a criminal fine, 46-19-102.

75-7-107 through 75-7-110 reserved.

75-7-111. Notice of project. (1) A person planning to engage in a project shall present written notice of the project to the supervisors before any portion of the project takes place.

(2) The notice shall include the location, general description, and preliminary plan of the project.

History: En. 26-1513 by Sec. 4, Ch. 463, L. 1975; R.C.M. 1947, 26-1513.

Cross-References

Removal of obstructions caused by beaver and beaver dams, 87-1-224.

75-7-112. Procedure for considering projects — team. (1) The supervisors shall receive all notices of proposed projects within their district. They shall, within 5 days of receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project. Within the 5 days, they shall send a copy of their determination to the department and the applicant. If the supervisors determine that the proposal is not a project, the applicant may, upon receipt of written notice, proceed with the proposed activity.

(2) If the supervisors determine that the proposal is for a project, the department shall, within 5 days of receipt of the determination, notify the supervisors whether the department requests an onsite inspection by a team.

(3) The supervisors shall call a team together within 20 days of receipt of the request of the department for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 days after notice of the call for an inspection, of his waiver of participation in the inspection. If the department does not request an onsite inspection within the time specified above, the supervisors may deny or approve the project or may make recommendations for alternative plans.

(4) Each member of the team shall recommend in writing, within 50 days of the date of application, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(5) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision.

(6) When a member of the team disagrees with the supervisors' action, he may ask, within 5 days of receipt of the supervisors' decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision thereon.

(7) Upon written notice, with a recommendation or alternative plan, by the supervisors to the applicant, the applicant, within 15 days, shall notify the supervisors in writing if he wishes to proceed with the project in accordance with the recommendations or alternative plans. No work may be commenced on a project before the end of this 15-day period unless written permission is given by all team members. If the written decision of the supervisors approves the proposed project without recommendation or alternative plan, the applicant may proceed with the project upon the expiration of 10 days after receipt of the decision.

(8) The supervisors may extend, upon the request of a team member, the time limits provided in subsections (4) and (5) where, in their determination, the time provided is not sufficient to carry out the purposes of this part. The time extension may not, in total, exceed 1 year from date of application. The applicant shall be notified, within 60 days of date of application, of the initial time extension and shall be notified immediately of any subsequent time extensions.

(9) No work on a project under this part may take place without the written consent of the supervisors.

History: En. 26-1514 by Sec. 5, Ch. 463, L. 1975; amd. Sec. 1, Ch. 140, L. 1977; R.C.M. 1947, 26-1514.

75-7-113. Emergencies — procedure. (1) The provisions of this part do not apply to those actions which are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for a project under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.

(2) The supervisors shall send one copy of the notice, within 5 days of its receipt, to the department.

(3) A team, called together as described in 75-7-112(3), shall make an onsite inspection and individual written reports to the supervisors within 30 days, giving its observations and opinions on the emergency project.

(4) If the same or a similar emergency occurs to the same applicant more than once within a 5-year period, the supervisors shall request the team members to include in their reports a determination of the validity of the emergency action and to ascertain the feasibility of a more permanent solution to the emergency.

(5) The supervisors shall determine the feasibility of a more permanent solution and shall, within 30 days, recommend that the person put the solution into effect within a reasonable period of time as determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this part unless a subsequent emergency action results from this failure.

(6) When a member of the team or the applicant disagrees with the supervisors' recommendation, he may ask that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision thereon.

History: En. 26-1517 by Sec. 8, Ch. 463, L. 1975; amd. Sec. 2, Ch. 140, L. 1977; R.C.M. 1947, 26-1517.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-114. Arbitration panel — selection. The arbitration panel shall consist of three members chosen by the senior judge of the judicial district in which the dispute takes place. The members shall be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the policy set forth in 75-7-102.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(1).

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-115. Arbitration panel — costs. Cost of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(2).

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-116. Modification of plan — assignment of costs. (1) If the final decision of the arbitration panel requires modifications or alterations from the original project plan as approved by the supervisors, then the arbitration panel shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.

(2) Any of the involved entities may withdraw or modify required modification of the project within 10 days after the decision.

History: En. 26-1518 by Sec. 9, Ch. 463, L. 1975; R.C.M. 1947, 26-1518.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-117. Rules — minimum standards. (1) The board of natural resources and conservation, after consultation with the association of conservation districts, shall adopt and may from time to time revise rules setting minimum standards and guidelines for the purposes of this part.

(2) The supervisors of each district shall adopt and may from time to time revise by resolution after a public hearing rules setting standards and guidelines for projects and exclusions within their districts which meet, exceed, or are not covered by the minimum standards set by the board under subsection (1).

History: En. 26-1520 by Sec. 11, Ch. 463, L. 1975; R.C.M. 1947, 26-1520; amd. Sec. 2, Ch. 551, L. 1987.

Cross-References

Rulemaking — Montana Administrative Procedure Act, Title 2, ch. 4.

75-7-118 through 75-7-120 reserved.

75-7-121. Judicial review. Any final action under this part may be appealed within 30 days to the district court.

History: En. 26-1521 by Sec. 12, Ch. 463, L. 1975; R.C.M. 1947, 26-1521.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

District Courts, Title 3, ch. 5.

Venue for action arising on stream, 25-2-124.

75-7-122. Public nuisance. Except for emergency action, a project engaged in by any person without prior approval as prescribed in this part is declared a public nuisance and subject to proceedings for immediate abatement.

History: En. 26-1522 by Sec. 13, Ch. 463, L. 1975; R.C.M. 1947, 26-1522.

Cross-References

Obstruction of rivers and streams as a nuisance, 27-30-101.

Action to abate public nuisance, 27-30-202.

Criminal code — public nuisance, 45-8-111.

75-7-123. Initiating project without consent — penalties — restoration. Any person initiating a project without written consent of the supervisors is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $500 or by a civil penalty of not less than $25 or more than $500 for each day that person continues to physically alter or modify the stream, and in addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near its prior condition as possible.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(1); amd. Sec. 1, Ch. 255, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 255 near middle inserted "or by a civil penalty of not less than $25 or more than $500".

Cross-References

Venue for action arising on stream, 25-2-124.

Execution of a criminal fine, 46-19-102.

Restoration of damaged streams, 87-5-509.

75-7-124. Violation of time provisions — penalty. Any person or entity who violates the time provisions of this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of $5 per day.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(2).

Cross-References

Execution of a criminal fine, 46-19-102.

Part 2

Lakeshores

Part Cross-References

Recreational use of lakes not addressed, 23-2-310.

Water conservancy districts — level regulation, 85-9-102.

Recreational use — rules, 87-1-303.

Frontages — funds for recreational uses, 87-1-605.

75-7-201. Policy. The legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes. The legislature further declares that local governments should play the primary public roles in establishing policies to conserve and protect lakes. Local governments do not have adequate statutory powers to protect their lake areas, and it is the purpose of this part to confer such powers on local governments, provided that such powers are exercised to maintain public health, welfare, and safety.

History: En. 89-3701 by Sec. 1, Ch. 527, L. 1975; R.C.M. 1947, 89-3701.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-7-202. Definitions. As used in this part, the following definitions apply:

(1) "Lake" means a body of standing water and the area within its lakeshore occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least 160 acres for at least 6 months in a year of average precipitation as such averages are determined by the United States geological survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats.

(2) "Lakeshore" is the perimeter of a lake when the lake is at mean annual high-water elevation, including the land within 20 horizontal feet from that high-water elevation.

(3) "Local governing body" or "governing body" is that unit of local government authorized to administer the Montana Subdivision and Platting Act on the land adjoining a lake or part of a lake subject to this part.

(4) "Mean annual high-water elevation" is the mean average of the highest elevation of a lake in each of at least 5 consecutive years, excluding any high levels caused by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high-water elevation.

History: **En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).**

Cross-References

Montana Subdivision and Platting Act — governing body, 76-3-103.

75-7-203. Change in definition of lake by local government. A local governing body may by resolution change the minimum size in the definition of a lake so that this part may apply to natural lakes in the county no smaller than 20 acres in water surface area.

History: **En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).**

75-7-204. Work for which permit required. (1) A person who proposes to do any work that will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the local governing body.

(2) Without limitation, the following activities, when conducted below mean annual high-water elevation, are examples of work for which a permit is required: construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning, meaning the placement of a narrow strip of land across a portion of a lake to create a lagoon; filling; constructing breakwaters of pilings; constructing wharves and docks.

History: **En. 89-3703 by Sec. 3, Ch. 527, L. 1975; R.C.M. 1947, 89-3703; amd. Sec. 8, Ch. 68, L. 1979.**

75-7-205. Unauthorized work. A person who performs work in a lake after May 1, 1975, without a permit for that work shall, if required by the local governing body or the district court, restore the lake to its condition before he disturbed it.

History: **En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(1).**

Cross-References

Nuisance, Title 27, ch. 30.

Criminal code — public nuisance, 45-8-111.

75-7-206. Nature of property rights under part. Work or development authorized or approved under this part shall not create a vested property right in the permitted development other than in the physical structure, if any, so developed.

History: **En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(2).**

75-7-207. Regulations for issuance of permits. (1) Before January 1, 1976, every governing body having jurisdiction over an area containing a lake shall adopt regulations in the form of criteria for the issuance or denial of permits for work in lakes.

(2) Where a planning board has been created under 76-1-104 for an area containing a lake, the governing body shall seek the recommendations of the planning board as to the regulations to be adopted under this part.

(3) The local governing body may provide a summary procedure to permit work which it finds has a minimal or insignificant impact on a lakeshore.

(4) A governing body whose area contains more than one lake may adopt regulations in differing form for the various lakes, recognizing the physical and social differences between lakes.

(5) The requirements of 75-7-208 are minimum requirements and do not restrict a local governing body from adopting such stricter or additional regulations as may be authorized by other statutes.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(1), (3) thru (5).

Cross-References

Local governing body — Montana Subdivision and Platting Act, 76-3-103.

75-7-208. Factors favoring issuance of permit. The regulations shall favor issuance if the proposed work will not during either its construction or its utilization:

(1) materially diminish water quality;

(2) materially diminish habitat for fish or wildlife;

(3) interfere with navigation or other lawful recreation;

(4) create a public nuisance; or

(5) create a visual impact discordant with natural scenic values, as determined by the local governing body, where such values form the predominant landscape elements.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(2).

Cross-References

Water quality classifications and standards, Title 75, ch. 5, part 3.

75-7-209. Regulations for particular lake. Upon petition of five owners or 30% of the owners of land abutting a lake, whichever is smaller, the department of natural resources and conservation may adopt regulations under 75-7-207 and 75-7-208 for the particular lake. The department may then exercise the powers conferred upon a local governing body by this part until the governing body adopts the necessary regulations.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(6).

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-7-210. Application for permit — fee — limitations. (1) A person seeking a permit for work in a lake or on a lakeshore shall apply to the local governing body and shall pay a permit fee established by the governing body under subsection (2).

(2) (a) The local governing body shall establish a permit fee as provided in subsection (1). The permit fee must reasonably address the cost of administering the permit application. Factors the local governing body shall consider when establishing the fee include but are not limited to:

(i) the annual estimated total number of permit requests;

(ii) the complexity of the specific project;

(iii) the need for and location and number of onsite investigations; and

(iv) the estimated cost of the specific project.

(b) The fees established in this subsection may not exceed the following limits:

(i) $25 for residential permits not requiring a variance from the local governing authority;

(ii) $60 for residential permits requiring a variance from the local governing authority;

(iii) $60 for commercial permits not requiring a variance from the local governing authority; and

(iv) $150 for commercial permits requiring a variance from the local governing authority.

History: En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part); amd. Sec. 1, Ch. 648, L. 1991.

75-7-211. Consultation with local planning board. (1) Where a planning board has been created under 76-1-104 for the area containing the lake in question, the governing body shall seek the recommendation of the planning board as to the compliance of the proposed work with the criteria for the issuance of a permit. The planning board shall report its recommendations to the governing body as to whether the proposed work conforms to the criteria for issuance of a permit and may require the applicant to submit additional information before the board reports its recommendations.

(2) In areas where a planning board is not established, the functions of a planning board under this section shall be exercised by the local governing body.

History: En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part).

Cross-References

Governing body under Montana Subdivision and Platting Act, 76-3-103.

75-7-212. Issuance of permit. (1) Unless the applicant agrees to an extension of time, the governing body shall grant or deny permission for the work within 90 days of receiving an application for a permit.

(2) If the governing body finds that the proposed work conforms to the criteria for issuing a permit, it shall issue a permit or conditional permit.

(3) If the governing body finds that the work does not conform to the criteria, it shall deny the application.

History: En. 89-3706 by Sec. 6, Ch. 527, L. 1975; R.C.M. 1947, 89-3706.

75-7-213. Variance procedure. A governing body which proposes to grant a variance from its regulations under this part shall first prepare an environmental impact statement, at the expense of the applicant, which conforms to the requirements of regulations adopted pursuant to this part, distribute this statement to interested residents, and conduct a public hearing on the proposed action.

History: En. 89-3707 by Sec. 7, Ch. 527, L. 1975; R.C.M. 1947, 89-3707.

Cross-References

Environmental impact statements, 75-1-201.

75-7-214. Cooperation between governing bodies. If a lake, as defined by this part, is located under the jurisdiction of more than one governing body, the governing bodies are empowered and encouraged to enter into agreements to effectuate the purposes of this part and establish compatible criteria for denial or issuance of permits.

History: En. 89-3709 by Sec. 9, Ch. 527, L. 1975; R.C.M. 1947, 89-3709.

75-7-215. Judicial enforcement and review. The district court may hear and decide the following cases arising under this part within the district:

(1) a complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition or to enjoin further work in a lake;

(2) a petition of an interested person for review of a final action of a governing body upon an application for a permit;

(3) a petition of an interested person for review of an action of a governing body in adopting or amending regulations.

History: En. 89-3710 by Sec. 10, Ch. 527, L. 1975; R.C.M. 1947, 89-3710.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

District Courts, Title 3, ch. 5.

Venue for actions arising from lake dispute, 25-2-124.

Injunctions, Title 27, ch. 19.

Mandamus, Title 27, ch. 26.

75-7-216. Penalty. (1) A person who violates an order issued under this part or who knowingly violates a regulation made under this part commits a misdemeanor and on conviction may be sentenced to 30 days in the county jail or fined $500, or both.

(2) Fines collected under this section, except those collected in a justice's court, shall be paid to the general fund of the county where the offense was committed for the purpose of administering this part.

History: En. 89-3711 by Sec. 11, Ch. 527, L. 1975; R.C.M. 1947, 89-3711; amd. Sec. 44, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Execution of a criminal fine, 46-19-102.

75-7-217. Funding. In compliance with 1-2-112, the administration of this part is declared a public purpose of a city or county which may be paid out of permit application fees collected under 75-7-210 and federal revenue sharing moneys.

History: En. 89-3712 by Sec. 12, Ch. 527, L. 1975; R.C.M. 1947, 89-3712.

Part 3

Flathead Basin Commission

Part Cross-References

Establishment and organization of Flathead Basin Commission and staff, 2-15-213 through 2-15-215.

75-7-301. Short title. This part may be cited as the "Flathead Basin Commission Act of 1983".

History: En. Sec. 1, Ch. 424, L. 1983.

75-7-302. Purpose. The purpose of the Flathead basin commission is to protect the existing high quality of the Flathead Lake aquatic environment; the waters that flow into, out of, or are tributary to the lake; and the natural resources and environment of the Flathead basin.

History: En. Sec. 2, Ch. 424, L. 1983.

75-7-303. Definitions. As used in this part, the following definitions apply:

(1) "Aquatic resources" means all beneficial uses of water, including but not limited to water quality and water supply; recreational, scenic, and aesthetic values; and fish, wildlife, and other organisms.

(2) "Commission" means the Flathead basin commission established in 2-15-213.

(3) "Flathead basin" means all land and water areas the water from which drains into Flathead Lake or its tributaries.

History: En. Sec. 3, Ch. 424, L. 1983.

75-7-304. Duties of the commission. Duties of the commission are:

(1) to monitor the existing condition of natural resources in the basin and coordinate development of an annual monitoring plan. This plan must involve a cooperative strategy among all land and water management agencies within the Flathead basin and identify proposed and needed monitoring which emphasizes but is not limited to the aquatic resources of the Flathead basin.

(2) to encourage close cooperation and coordination between federal, state, provincial, tribal, and local resource managers for establishment of compatible resource development standards, comprehensive monitoring, and data collection and interpretation;

(3) to encourage and work for international cooperation and coordination between the state of Montana and the Province of British Columbia concerning the undertaking of natural resource monitoring and use of consistent standards for management of resource development activities throughout the North Fork Flathead River drainage portion of the Flathead basin;

(4) to encourage economic development and use of the basin's resources to their fullest extent without compromising the present high quality of the Flathead basin's aquatic environment;

(5) to, in the discretion of the commission, undertake investigations of resource utilization and hold public hearings concerning the condition of Flathead Lake and Flathead basin;

(6) to submit to the governor and, as provided in 5-11-210, to the legislature a biennial report that includes:

(a) a summary of information gathered in fulfillment of its duties under this section;

(b) information on monitoring activities within the Flathead basin concerning the condition of the basin's natural resources, with particular emphasis on Flathead Lake;

(c) the identification of land use and land development trends in the Flathead basin;

(d) any recommendations the commission considers appropriate for fulfillment of its duties and for continued preservation of the Flathead basin in the present high quality of its aquatic resources; and

(e) an accounting of all money received and expended, by source and purpose, for the period since the last report; and

(7) to meet at least semiannually within the Flathead basin, alternating the meeting site between the cities of Kalispell and Polson.

History: En. Sec. 7, Ch. 424, L. 1983; amd. Sec. 49, Ch. 112, L. 1991.

75-7-305. Commission authority. (1) The commission may make recommendations to the legislature and the governor and to federal, tribal, provincial, and local agencies for maintenance and enhancement of the quality of natural resources of the Flathead basin.

(2) The commission may receive and expend donations, gifts, grants, and other money necessary to fulfill its duties.

History: En. Sec. 8, Ch. 424, L. 1983; amd. Sec. 1, Ch. 244, L. 1985; amd. Sec. 9, Ch. 628, L. 1989.

75-7-306. Establishment of account. There is established in the state special revenue fund a Flathead basin commission account. Money received by the Flathead basin commission under 75-7-305 and such other funds as are designated or appropriated for its use must be deposited in the account.

History: En. Sec. 9, Ch. 424, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 7, Ch. 700, L. 1989.

Cross-References

Fund structure, 17-2-102.

75-7-307. Special county government authority. The governing body of any county within or bordering upon the Flathead basin may allocate to the Flathead basin commission a portion of any money available from coal severance tax allocations or other sources and designated for planning activities.

History: En. Sec. 10, Ch. 424, L. 1983.

75-7-308. Cooperation with other agencies and organizations. To fulfill its duties, the commission shall develop and maintain cooperative programs with federal, state, provincial, tribal, and local agencies or organizations that are responsible for natural resource management and monitoring in the Flathead basin. Participating federal and provincial agencies must be requested to provide adequate funds to participate on the commission and to monitor resources within their areas of responsibility.

History: En. Sec. 11, Ch. 424, L. 1983.

Part 4

Phosphorus Compounds — Model Rule

75-7-401. Adoption and amendment of model rule on sale and distribution of certain phosphorus compounds. (1) The department of health and environmental sciences shall adopt a model rule to provide standards that counties may adopt under 75-7-411 to prohibit the sale and distribution of certain phosphorus compounds used for cleaning.

(2) The standards in the model rule must be designed to protect water quality and aquatic ecosystems by reducing the amount of phosphorus that will enter state waters.

(3) The department may amend the model rule to:

(a) reflect changing technology related to phosphorus compounds in cleaning products;

(b) incorporate new findings about the impacts of phosphorus compounds on water quality; or

(c) respond to other relevant information.

(4) The department shall follow the procedures of Title 2, chapter 4, part 3, in adopting or amending the model rule.

History: En. Sec. 1, Ch. 574, L. 1985.

Cross-References

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21; Title 50, ch. 1, part 2.

Counties, Title 7, ch. 1, part 21.

County resolutions, Title 7, ch. 5, part 22.

Water quality, Title 75, ch. 5.

75-7-402. Distribution of model rule. The department shall send to the governing body of each county a notice of any rulemaking proceeding or hearing under 75-7-401, a copy of the model rule, and a copy of any amendment proposed or adopted.

History: En. Sec. 3, Ch. 574, L. 1985.

Cross-References

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21; Title 50, ch. 1, part 2.

Counties, Title 7, ch. 1, part 21.

County resolutions, Title 7, ch. 5, part 22.

Water quality, Title 75, ch. 5.

75-7-403. Prohibition of enforcement by department. The department may not enforce any standard or provision of the model rule. As provided in 75-7-411, the governing body of a county may adopt and enforce as an ordinance the standards contained in the model rule.

History: En. Sec. 2, Ch. 574, L. 1985.

Cross-References

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21; Title 50, ch. 1, part 2.

Counties, Title 7, ch. 1, part 21.

County resolutions, Title 7, ch. 5, part 22.

Water quality, Title 75, ch. 5.

75-7-404 through 75-7-410 reserved.

75-7-411. County regulation of sale and distribution of certain phosphorus compounds. (1) The governing body of a county may adopt, through the procedures of 7-5-103 through 7-5-107, an ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes. The governing body may rescind, modify, or repeal such ordinance at any time by use of the same procedures.

(2) An ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes may only be adopted if:

(a) the county has a natural lake, whether or not it is fitted with a dam, for which the department of health and environmental sciences or the governing body of the county has determined that eutrophication enhanced by human activity is occurring and that phosphorus is the limiting factor; and

(b) other efforts are being undertaken in the county to reduce the amount of phosphorus entering surface waters.

(3) Any ordinance adopted by the governing body of a county must contain standards designated by the model rule adopted by the department of health and environmental sciences under 75-7-401 and in effect at the time of the adoption of the county ordinance.

(4) Any ordinance adopted by the governing body of a county must be enforced by the county.

History: En. Sec. 4, Ch. 574, L. 1985.

Cross-References

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21; Title 50, ch. 1, part 2.

Counties, Title 7, ch. 1, part 21.

County resolutions, Title 7, ch. 5, part 22.

Water quality, Title 75, ch. 5.

75-7-412. Penalty. (1) A person involved in the sale or commercial distribution of any phosphorus compound prohibited by an ordinance adopted under 75-7-411 must be notified by the county and must be given 30 days from receipt of such notice to comply with the ordinance. Failure to comply with the ordinance following this 30-day period is a misdemeanor. Each day of violation is a separate offense.

(2) The penalty provided for in subsection (1) applies only to persons engaged in the sale or commercial distribution of prohibited phosphorus compounds. The county may not prosecute or otherwise penalize a person for using a phosphorus compound regulated by an ordinance adopted under 75-7-411.

History: En. Sec. 5, Ch. 574, L. 1985.

Cross-References

Misdemeanor penalty when no penalty specified, 46-18-212.

CHAPTERS 8 AND 9

RESERVED

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75-10-910. Money to solid waste management account.
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75-10-913. Annual long-range plan submitted — contents — available to public.
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75-10-928. Record of hearing — procedure — rules of evidence — burden of proof.
75-10-929. Decision of board — findings necessary for certification.
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75-10-931 and 75-10-932 reserved.
75-10-933. License required.
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75-10-943. Penalties for violation — civil action by attorney general.
75-10-944. Order not stayed by appeal — stay or suspension by court — limitations.
75-10-945. Surety bond.
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75-10-950. Definitions.
75-10-951. Megalandfill financial assurance — release.
75-10-952. Bond forfeiture.
75-10-953. Reclamation by board.
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Part 10 — Infectious Waste Management Act

75-10-1001. Short title.
75-10-1002. Purpose.
75-10-1003. Definitions.
75-10-1004. Prohibition.
75-10-1005. Management standards — procedures for storage, transportation, treatment, and disposal.
75-10-1006. Licensing and regulation — rulemaking authority.

Part 11 — Notice of Motor Oil Recycling Center

75-10-1101. Waste oil notice.

Chapter Cross-References

County control of litter, 7-5-2109.

Regulation of cesspool, septic tank, and privy cleaners, Title 37, ch. 41.

Littering on highways prohibited, 61-8-365.

Pesticides, Title 80, ch. 8.

Memorandum of agreement with Department of Agriculture, 80-8-110.

Forfeiture of hunting or fishing license for littering, 87-2-112.

Part 1

Plans, Funds, and Administration

75-10-101. Purpose. The purpose of this part is to encourage the good management of solid waste and the conservation of natural resources through the promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes where economically feasible and to provide a coordinated state solid waste and resource recovery plan.

History: En. 69-4012 by Sec. 2, Ch. 575, L. 1977; R.C.M. 1947, 69-4012(part).

75-10-102. Public policies. (1) To implement this part, the following are declared to be public policies of this state:

(a) Maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of the natural environment.

(b) Solid waste management systems shall be developed, financed, planned, designed, constructed, and operated for the benefit of the people of this state.

(c) Private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems.

(d) Local governments shall retain primary responsibility for adequate solid waste management with the state preserving those functions necessary to assure effective solid waste management systems throughout the state.

(e) Costs for the management and regulation of solid waste management systems should be charged to those persons generating solid waste in order to encourage the reduction of the solid waste stream.

(f) Encouragement and support be given to individuals and municipalities to separate solid waste at its source in order to maximize the value of such wastes for reuse.

(g) The state shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems.

(h) Actions and activities performed or carried out by persons and their contractors in accordance with this part shall be in conformity with the state solid waste plan.

(i) When licensing a solid waste management system, the department shall consult with units of local government that have jurisdiction over the area encompassing the proposed system.

(2) This part is in addition and supplemental to any other law providing for the financing of a solid waste management system and does not amend or repeal any other law.

History: En. 69-4012, 69-4019 by Secs. 2, 9, Ch. 575, L. 1977; R.C.M. 1947, 69-4012(part), 69-4019; amd. Sec. 1, Ch. 215, L. 1991; amd. Sec. 2, Ch. 643, L. 1991.

Cross-References

Beauty of the state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Refuse disposal districts, Title 7, ch. 13, part 2.

Regulation of cesspool, septic tank, and privy cleaners, Title 37, ch. 41.

75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Container site" means a solid waste management facility, generally open to the public, for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(5) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(6) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(7) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(8) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

(9) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

(11) "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

(12) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part.

History: En. 69-4013 by Sec. 3, Ch. 575, L. 1977; R.C.M. 1947, 69-4013; amd. Sec. 1, Ch. 482, L. 1981; amd. Sec. 1, Ch. 213, L. 1991; amd. Sec. 1, Ch. 201, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 201 inserted definition of container site; and in definition of solid waste management system inserted last sentence regarding container sites. Amendment effective July 1, 1993.

75-10-104. *(Temporary)* **Duties of department.** The department shall:

(1) prepare a state solid waste management and resource recovery plan as required by 75-10-807 for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) governing procedures to be followed in applying for and making loans;

(c) governing agreements between a local government and the department for grants or loans under this part;

(d) establishing, for the purpose of determining the solid waste management fee to which a facility is subject under 75-10-115 or 75-10-118, methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;

(e) providing procedures for the quarterly collection of the solid waste management fees provided for in 75-10-115 and 75-10-118; and

(f) providing guidelines for integrated waste management;

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system that is compatible with the state plan whenever financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:

(a) a solid waste management system in order to ensure that the system conforms to the state plan;

(b) integrated waste management programs; and

(c) collection, disposal, reduction, and educational programs for household hazardous waste and conditionally exempt small quantities of hazardous waste as defined in Rule 16.44.402, Administrative Rules of Montana;

(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;

(6) enforce and administer the provisions of this part;

(7) administer loans made by the state under the provisions of this part;

(8) approve plans for a proposed solid waste management system submitted by a local government; and

(9) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility.

75-10-104. *(Effective July 1, 1995)* **Duties of department.** The department shall:

(1) prepare a state solid waste management and resource recovery plan as required by 75-10-807 for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) governing procedures to be followed in applying for and making loans;

(c) governing agreements between a local government and the department for grants or loans under this part;

(d) establishing, for the purpose of determining the solid waste management fee to which a facility is subject under 75-10-118, methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;

(e) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-118; and

(f) providing guidelines for integrated waste management;

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system which is compatible with the state plan whenever financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:

(a) a solid waste management system in order to ensure that the system conforms to the state plan;

(b) integrated waste management programs; and

(c) collection, disposal, reduction, and educational programs for household hazardous waste and conditionally exempt small quantities of hazardous waste as defined in Rule 16.44.402, Administrative Rules of Montana;

(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;

(6) enforce and administer the provisions of this part;

(7) administer loans made by the state under the provisions of this part;

(8) approve plans for a proposed solid waste management system submitted by a local government; and

(9) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility.

History: En. 69-4014 by Sec. 4, Ch. 575, L. 1977; R.C.M. 1947, 69-4014(1); amd. Sec. 10, Ch. 696, L. 1989; amd. Sec. 8, Ch. 222, L. 1991; amd. Sec. 2, Ch. 398, L. 1991; amd. Sec. 3, Ch. 643, L. 1991; amd. Sec. 1, Ch. 145, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 145 in (2)(d) and (2)(e) inserted reference to 75-10-115; and made minor changes in style. Amendment effective July 1, 1993.

Code Commissioner Note: The version of this section effective July 1, 1995, in (2)(d) and (2)(e) substituted "75-10-118" for "75-10-115". The Code Commissioner has not reflected this change because it would be redundant with the amendment made by Ch. 145.

Extension of Effective Date: The July 1, 1993, effective date in sec. 8, Ch. 398, L. 1991, was extended to July 1, 1995, by sec. 1, Ch. 273, L. 1993. The effective date of the extension in sec. 1, Ch. 273, L. 1993, was October 1, 1993. Technically, the July 1, 1993, version of this section is in effect for the period from July 1, 1993, until October 1, 1993. The Code Commissioner has not codified the temporary version because the apparent legislative intent was to not have that version effective.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-10-105. *(Temporary)* **Powers of department.** The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part;

(2) make loans to a local government for the planning, design, and implementation of a solid waste management system;

(3) make grants for a local government for planning or implementation of a solid waste management system; and

(4) collect the solid waste management fees provided for in 75-10-115 and 75-10-118.

75-10-105. *(Effective July 1, 1995)* **Powers of department.** The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part;

(2) make loans to a local government for the planning, design, and implementation of a solid waste management system;

(3) make grants for a local government for planning or implementation of a solid waste management system; and

(4) collect the solid waste management fee provided for in 75-10-118.

History: En. 69-4014 by Sec. 4, Ch. 575, L. 1977; R.C.M. 1947, 69-4014(2); amd. Sec. 2, Ch. 482, L. 1981; amd. Sec. 11, Ch. 696, L. 1989; amd. Sec. 3, Ch. 398, L. 1991; amd. Sec. 2, Ch. 145, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 145 in (4) inserted reference to 75-10-115; and made minor changes in style. Amendment effective July 1, 1993.

Code Commissioner Note: The version of this section effective July 1, 1995, in (4) substituted "75-10-118" for "75-10-115". The Code Commissioner has not reflected this change because it would be redundant with the amendment made by Ch. 145.

Extension of Effective Date: The July 1, 1993, effective date in sec. 8, Ch. 398, L. 1991, was extended to July 1, 1995, by sec. 1, Ch. 273, L. 1993. The effective date of the extension in sec. 1, Ch. 273, L. 1993, was October 1, 1993. Technically, the July 1, 1993, version of this section is in effect for the period from July 1, 1993, until October 1, 1993. The Code Commissioner has not codified the temporary version because the apparent legislative intent was to not have that version effective.

75-10-106. Duties of board. The board shall:

(1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in 75-10-111; and

(2) adopt rules necessary for the implementation of this part, including but not limited to rules governing the following:

(a) submission of plans for a solid waste management system;

(b) the procedures to be followed in applying for and making loans and grants;

(c) the requirements for eligibility for grants; and

(d) the agreements between the local government and the department for grants and loans under this part.

History: En. 69-4015 by Sec. 5, Ch. 575, L. 1977; R.C.M. 1947, 69-4015; amd. Sec. 3, Ch. 482, L. 1981.

Cross-References

Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4, part 3.

75-10-107 through 75-10-109 reserved.

75-10-110. *(Temporary)* **Solid waste disposal regions.** (1) There are six solid waste disposal regions, as follows:

(a) eastern Montana, consisting of Phillips, Garfield, Rosebud, and Powder River counties and all Montana counties east of these counties;

(b) northern Montana, consisting of Blaine, Cascade, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole counties;

(c) south central Montana, consisting of Bighorn, Carbon, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone counties;

(d) southwestern Montana, consisting of Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis and Clark, Madison, Meagher, Park, Powell, and Silver Bow counties;

(e) northwest Montana, consisting of Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders counties; and

(f) all areas outside of Montana.

(2) The department shall assist and encourage persons involved in solid waste management to coordinate activities within each region in Montana to provide for the safe, efficient, and effective management of solid waste. *(Repealed effective July 1, 1995—sec. 1, Ch. 273, L. 1993.)*

History: En. Sec. 3, Ch. 696, L. 1989.

75-10-111. State solid waste management plan — hearings and action. (1) A proposed solid waste management plan shall be prepared by the department in conjunction with local governments in the state and any other interested person. After a draft of a proposed solid waste management plan has been prepared, the department shall circulate a copy of the proposed plan to the board of county commissioners in each county in the state, the governing body of every incorporated city or town in the state, any person responsible for the operation of a solid waste management system under the provisions of parts 1 and 2, chapter 10 of this title, the governor, the environmental quality council, and any other interested person for at least 90 days prior to submission of a final proposed solid waste management plan to the board. During the 90-day period for receipt of comments on the draft plan, the department shall hold at least three public hearings around the state on the draft plan.

(2) A final proposed plan shall be prepared based on the comments and objections received at the public hearings and from the persons who have submitted comments on the draft solid waste management plan. The final plan submitted to the board shall include a discussion of all comments and objections received and the reasons why recommendations for changes or amendments to the proposed plan were accepted or rejected. The board shall consider the final proposed solid waste management plan after giving notice and holding at least one public hearing pursuant to the rulemaking procedures outlined in the Montana Administrative Procedure Act.

History: En. 69-4016 by Sec. 6, Ch. 575, L. 1977; R.C.M. 1947, 69-4016.

Cross-References

Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4, part 3.

Environmental Quality Council, Title 75, ch. 1, part 3.

75-10-112. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste plan and propose modifications to the state's solid waste plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) finance a solid waste management system through the assessment of a tax as authorized by state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local government plans, designs, or constructs, for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of a local government;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites.

History: En. 69-4017 by Sec. 7, Ch. 575, L. 1977; R.C.M. 1947, 69-4017; amd. Sec. 3, Ch. 145, L. 1993; amd. Sec. 3, Ch. 201, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 145 in (11) and (13), at end after "rules", inserted "adopted to implement this part"; in (18), near end, substituted "solid waste management" for "refuse disposal"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 201 inserted (20) regarding container sites. Amendment effective July 1, 1993.

Cross-References

County taxation, Title 7, ch. 6, part 25.

Municipal taxation, Title 7, ch. 6, part 44.

75-10-113. User's fee assessed. In the event the revenues of a solid waste management system are insufficient to pay the costs, a local government may levy a pro rata fee against the users of the solid waste management district. The pro rata fee shall be based on a per ton, per pound, or volume assessment.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(6); amd. Sec. 9, Ch. 68, L. 1979.

75-10-114 reserved.

75-10-115. Solid waste management fee. (1) The department may establish and collect fees for the management and regulation of solid waste disposal. These fees may include:

(a) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility;

(b) an annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal and based upon the following formula:

(i) for a major facility with a planned capacity of more than 25,000 tons of solid waste a year, $3,500;

(ii) for an intermediate facility with a planned capacity of more than 5,000 tons a year but not more than 25,000 tons a year, $3,000;

(iii) for a minor facility with a planned capacity of not more than 5,000 tons a year, $2,500; and

(c) a volume-based fee on solid waste disposal.

(2) All fees collected must be deposited in the solid waste management account provided for in 75-10-117.

History: En. Sec. 1, Ch. 696, L. 1989; amd. Sec. 4, Ch. 643, L. 1991.

75-10-116. *(Temporary)* **Penalties for failure to pay fee.** A person who owns a solid waste disposal facility subject to a fee under 75-10-115 or 75-10-118 and fails to pay the fee in the manner provided by department rule is subject to a fine of not more than $2,000 or imprisonment not to exceed 6 months, or both, and shall reimburse the department for the amount of the fee owed and interest calculated at a rate equal to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

75-10-116. *(Effective July 1, 1995)* **Penalties for failure to pay fee.** A person who owns a solid waste disposal facility subject to a fee under 75-10-118 and fails to pay the fee in the manner provided by department rule is subject to a fine of not more than $2,000 or imprisonment not to exceed 6 months, or both, and shall reimburse the department for the amount of the fee owed and interest calculated at a rate equal to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

History: En. Sec. 4, Ch. 696, L. 1989; amd. Sec. 4, Ch. 398, L. 1991; amd. Sec. 4, Ch. 145, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 145 near beginning inserted reference to 75-10-115. Amendment effective July 1, 1993.

Code Commissioner Note: The version of this section effective July 1, 1995, near beginning substituted "75-10-118" for "75-10-115". The Code Commissioner has not reflected this change because it would be redundant with the amendment made by Ch. 145.

Extension of Effective Date: The July 1, 1993, effective date in sec. 8, Ch. 398, L. 1991, was extended to July 1, 1995, by sec. 1, Ch. 273, L. 1993. The effective date of the extension in sec. 1, Ch. 273, L. 1993, was October 1, 1993. Technically, the July 1, 1993, version of this section is in effect for the period from July 1, 1993, until October 1, 1993. The Code Commissioner has not codified the temporary version because the apparent legislative intent was to not have that version effective.

75-10-117. *(Temporary)* **Solid waste management accounts.** (1) There are solid waste management accounts in the special revenue fund type provided for in 17-2-102.

(2) There must be deposited in the accounts:

(a) all revenue from the solid waste management fees provided for in 75-10-115 and 75-10-118;

(b) fees, taxes, fines, and penalties as required under 75-10-910;

(c) fees collected under the provisions of 75-10-1006; and

(d) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source, intended to be used for the purposes of the accounts.

(3) The accounts may be used by the department only for the administration of part 2, this part, and 75-2-215.

75-10-117. *(Effective July 1, 1995)* **Solid waste management account.** (1) There is a solid waste management account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the solid waste management fee provided for in 75-10-118; and

(b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source, intended to be used for the purposes of the account.

(3) The account may be used by the department only for the administration of part 2, this part, and 75-2-215.

History: En. Sec. 2, Ch. 696, L. 1989; amd. Sec. 5, Ch. 398, L. 1991; amd. Sec. 5, Ch. 145, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 145 in (2)(a) inserted reference to 75-10-115; inserted (2)(b) requiring deposit of fees, taxes, fines, and penalties collected under 75-10-910; inserted (2)(c) requiring deposit of fees collected under 75-10-1006; and made minor changes in style. Amendment effective July 1, 1993.

Code Commissioner Note: The version of this section effective July 1, 1995, in (2)(a) substituted "75-10-118" for "75-10-115". The Code Commissioner has not reflected this change because it would be redundant with the amendment made by Ch. 145.

Extension of Effective Date: The July 1, 1993, effective date in sec. 8, Ch. 398, L. 1991, was extended to July 1, 1995, by sec. 1, Ch. 273, L. 1993. The effective date of the extension in sec. 1, Ch. 273, L. 1993, was October 1, 1993. Technically, the July 1, 1993, version of this section is in effect for the period from July 1, 1993, until October 1, 1993. The Code Commissioner has not codified the temporary version because the apparent legislative intent was to not have that version effective.

75-10-118. *(Effective July 1, 1995)* **Solid waste management fee — out-of-state waste.** (1) Notwithstanding the fee established pursuant to 75-10-204(8) and except as provided in subsection (2) of this section, a person who owns an incinerator that burns solid waste or a solid waste disposal facility that is licensed pursuant to 75-10-221 and to rules adopted under 75-10-221 shall pay to the department a quarterly fee of $5 for each ton of solid waste generated outside Montana and incinerated or disposed of at the facility.

(2) A person who owns a solid waste disposal facility that is licensed pursuant to 75-10-221 and to rules adopted under 75-10-221 that receives less than 25,000 tons of solid waste annually shall pay the department a quarterly fee, determined by the department pursuant to 75-10-204(8), for each ton of solid waste generated outside Montana.

(3) All fees must be deposited in the solid waste management account provided for in 75-10-117.

History: En. Sec. 1, Ch. 398, L. 1991; amd. Sec. 2, Ch. 273, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 273 in (1), at beginning, inserted "Notwithstanding the fee established pursuant to 75-10-204(8) and except as provided in subsection (2) of this section"; and inserted (2) imposing a quarterly per-ton fee on a person with a facility that receives less than 25,000 tons of solid waste annually.

Extension of Effective Date: The July 1, 1993, effective date in sec. 8, Ch. 398, L. 1991, was extended to July 1, 1995, by sec. 1, Ch. 273, L. 1993. The effective date of the extension in sec. 1, Ch. 273, L. 1993, was October 1, 1993. Technically, the July 1, 1993, version of this section is in effect for the period from July 1, 1993, until October 1, 1993. The Code Commissioner has not codified the temporary version because the apparent legislative intent was to not have that version effective.

75-10-119 and 75-10-120 reserved.

75-10-121. Solid waste management loans — requisites. (1) The department may, in the name of the state of Montana, enter into agreements with a local government for loans, subject to any existing contractual obligations of the local government.

(2) A loan agreement must include but not be limited to the following:

(a) the amount of the loan, not to exceed the estimated reasonable amount of the total implementation cost, excluding equipment, construction, or land acquisition as determined by the department;

(b) an agreement by the department to pay part of the amount of the loan to the local government on a timetable as may be agreed upon by the parties;

(c) an agreement by the local government to proceed with the solid waste management system in accordance with plans approved by the department;

(d) an agreement by the local government to commence operation of the solid waste management system on its completion and not to discontinue operations or dispose of the solid waste management system without the approval of the department;

(e) an agreement by the local government to operate and maintain a solid waste management system in accordance with applicable provisions of part 2 of this chapter and rules of the department;

(f) an agreement by the local government to pledge any available sources of revenue to the repayment of loans according to the schedule established by the department. Any revenues from the sale of energy or recycled materials recovered from the solid waste management system and any money received under federal grants for local solid waste management may be used to make such payments. State loan funds for local solid waste management systems may be used only for front-end organizational activities.

(g) an agreement by the local government to establish and maintain adequate financial records for the solid waste management system, including an annual audit of the financial records and transactions covering each fiscal year by a certified public accountant. A copy of each audit must be submitted to the department of administration and the department within 30 days after its completion. Failure of a local government to file a copy of the audit as required by this section shall be grounds for rescinding the loan agreement.

(3) The department may enter into further agreements with a local government and acquire further guarantees or securities as are necessary to implement the provisions of this part.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(1), (3); amd. Sec. 10, Ch. 68, L. 1979.

75-10-122. Considerations in setting loan priorities. In allocating loan funds to local governments, the department shall establish priority based on a consideration of the plan that:

(1) most fully utilizes private enterprise for planning, design, management, construction, and operation of the facilities required to implement a solid waste management system;

(2) includes the largest population;

(3) is the most financially viable; and

(4) addresses the most pressing environmental and public health concerns.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(2).

75-10-123. Availability of state loans. Loan money as provided for under this part is available only if the local government is unable to secure adequate financing from other lending institutions or is unable to provide the adequate and necessary bonding for the implementation of a proposed solid waste management system.

History: En. 69-4020 by Sec. 10, Ch. 575, L. 1977; R.C.M. 1947, 69-4020.

75-10-124. Approval, payment, and compliance. (1) A loan agreement entered into pursuant to this part is subject to approval by the department and shall be accounted for on forms prepared by the department.

(2) The department shall establish a schedule of payments to be made by a local government under a loan agreement. Payment shall be made in an amount sufficient to pay the principal and interest cost of the loan obtained from the department.

(3) If a local government fails to comply with the payment schedule established by the department, the state may, after giving 30 days' written notice, withhold an equal share of any state taxes which are otherwise apportioned to the local government.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(4), (5), (7).

75-10-125. Solid waste management implementation grants. (1) The department, in the name of the state of Montana, may enter into an agreement with a local government for a grant of front-end implementation funds to a local government.

(2) The terms of the agreement, in addition to those prescribed by rules of the board, must include the following:

(a) the amount of the grant, not to exceed 50% of the reasonable purchase price of the capital equipment to be used by the local government in its solid waste management system;

(b) an agreement by the local government:

(i) to operate and maintain a solid waste management system in accordance with plans approved by the department, with applicable provisions of part 2 of this chapter and with rules of the department; and

(ii) not to discontinue operations or terminate a solid waste management system without the approval of the department;

(c) an agreement by the local government that if it trades or sells the capital equipment purchased with grant funds within 5 years of the date of execution of the grant agreement, the local government shall pay to the department an amount equal to the fair market value of the capital equipment on the date of the trade or sale;

(d) certification by the local government that any front-end implementation funds received pursuant to this section will be used solely for the purpose stated in the grant agreement; and

(e) an agreement by the local government to establish and maintain adequate financial records for the solid waste management system, including, within 60 days of the date of termination of the grant agreement, an audit by a certified public accountant of the financial records and transactions. A copy of this audit must be submitted to the department of administration and the department within 30 days of its completion.

(3) In granting front-end implementation funds to local governments, the department may consider only local government applications that include a solid waste management system plan that conforms to the state solid waste management plan and that specify the method by which the solid waste management system will be financed.

(4) No local government may receive a grant of front-end implementation funds under this section unless its solid waste management system plan has

been approved by the department and the method of financing the approved solid waste management system has been implemented.

History: En. Sec. 4, Ch. 482, L. 1981.

Part 2

Licensing of Refuse Disposal and Transportation Montana Solid Waste Management Act

Part Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Regulation of cesspool, septic tank, and privy cleaners, Title 37, ch. 41.

75-10-201. Short title. This part may be cited as "The Montana Solid Waste Management Act".

History: En. 69-4001.1 by Sec. 2, Ch. 542, L. 1977; R.C.M. 1947, 69-4001.1.

Cross-References

Regulation of cesspool, septic tank, and privy cleaners, Title 37, ch. 41.

75-10-202. Legislative findings and policy. It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible.

History: En. Sec. 1, Ch. 35, L. 1965; amd. Sec. 1, Ch. 542, L. 1977; R.C.M. 1947, 69-4001; amd. Sec. 1, Ch. 358, L. 1981.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Refuse disposal districts, Title 7, ch. 13, part 2.

75-10-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

(5) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.

(6) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles.

(7) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Resource recovery" means the recovery of material or energy from solid waste.

(9) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(11) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

(12) "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site, as defined in 75-10-103, is not a component of a solid waste management system.

(13) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(14) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

History: En. Sec. 2, Ch. 35, L. 1965; amd. Sec. 26, Ch. 349, L. 1974; amd. Sec. 3, Ch. 542, L. 1977; R.C.M. 1947, 69-4002; amd. Sec. 2, Ch. 358, L. 1981; amd. Sec. 3, Ch. 529, L. 1981; amd. Sec. 1, Ch. 677, L. 1989; amd. Sec. 1, Ch. 407, L. 1991; amd. Sec. 2, Ch. 201, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 201 in definition of solid waste management system inserted last sentence regarding container sites. Amendment effective July 1, 1993.

Cross-References

Securing of load — requirement, 61-8-370.

75-10-204. Powers and duties of department. The department shall adopt rules governing solid waste management systems which shall include but are not limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(5) requirements relating to ground water monitoring, including but not limited to:

(a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in 75-10-207 must submit to the department to enable the department to prepare the priority compliance list authorized by 75-10-207(3);

(b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and

(c) recordkeeping and reporting;

(6) fees related to the review of solid waste management system license applications;

(7) the renewal of solid waste management system licenses and related fees;

(8) a quarterly fee based on the justifiable direct and indirect costs to the state of administering Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or incinerated within Montana. These rules must be adopted by August 1, 1993.

(9) any other factors relating to the sanitary disposal or management of solid wastes.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(1); amd. Sec. 3, Ch. 358, L. 1981; amd. Sec. 3, Ch. 677, L. 1989; amd. Sec. 5, Ch. 643, L. 1991; amd. Sec. 3, Ch. 273, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 273 inserted (8) relating to a quarterly fee based on the justifiable costs to the state of administering Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or incinerated in Montana. Amendment effective April 7, 1993.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-10-205. Inspections. The department has continuing authority and responsibility to inspect a solid waste management system under the provisions of this part. Inspections may be conducted only during reasonable hours and only after presentation of appropriate credentials identifying the inspector as a duly authorized employee of the department.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(2).

Cross-References

Searches and seizures — right of private individual to be secure, Art. II, sec. 11, Mont. Const.

75-10-206. Variance. (1) Any person may apply to the board for a variance from rules adopted by the department pursuant to 75-10-204, except for rules adopted pursuant to 75-10-204(8). The board may grant a variance if it finds that:

(a) failure to comply with the rules does not result in a danger to public health or safety; or

(b) compliance with the rules from which a variance is sought would produce hardship without producing benefits to the health and safety of the public that outweigh the hardship.

(2) No variance may be granted pursuant to this section except after a hearing pursuant to the Montana Administrative Procedure Act and consideration by the board of the relative interests of the applicant and owners of the property likely to be affected by the waste disposal system under consideration.

(3) Nothing in this section may be construed as relieving the board from the obligation to comply with the Resource Conservation and Recovery Act of 1976, as amended, or as allowing the board to grant a variance less restrictive than that act.

History: En. Sec. 1, Ch. 563, L. 1981; amd. Sec. 4, Ch. 273, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 273 in (1), after "75-10-204", inserted "except for rules adopted pursuant to 75-10-204 (8)".

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-10-207. Ground water monitoring. (1) Owners and operators of municipal solid waste landfills and other disposal sites that at any time accepted household waste, that are in operation as of October 1, 1989, and that serve a geographic area with a population of 5,000 or more persons as determined by the most recent census are required to monitor ground water as specified by the department.

(2) If the owner or operator of a municipal solid waste landfill or other disposal site specified in subsection (1) can demonstrate to the department that there is no potential for migration of constituents from the site that could cause pollution of ground water during the active life of the site, including the closure period, and during postclosure care, the requirement for ground water monitoring specified in subsection (1) does not apply. The information provided to the department to make this demonstration must be certified by a qualified geologist, hydrogeologist, or geotechnical engineer and must include reliable site-specific data.

(3) Based on site-specific information that owners and operators of municipal solid waste landfills and other disposal sites specified in subsection (1) provide to the department, the department shall establish a priority compliance list that identifies those sites where there is the greatest risk that constituents from the sites may cause pollution of ground water, considering:

(a) proximity to current and potential drinking water supplies;

(b) site hydrologic and geologic characteristics; and

(c) age and design of the site.

(4) Owners and operators of municipal solid waste landfills and other disposal sites specified in subsection (1) shall submit proposed plans to the department for accomplishing ground water monitoring, consistent with

requirements specified by department rules. The plans may be based on the information owners and operators provide to the department as specified in subsection (3). The department may approve the plans as submitted or require modifications to the plans as necessary to accomplish the purposes of this section.

(5) All sites included on the priority compliance list authorized by subsection (3) must comply with this section by January 1, 1991. All other sites subject to this section must comply by January 1, 1992.

History: En. Sec. 2, Ch. 677, L. 1989.

75-10-208 reserved.

75-10-209. Moratorium on certain interstate transport of solid waste. (1) The state of Montana recognizes the importance of providing for disposal or incineration of solid waste in a manner that protects Montana's public health, safety, welfare, and environment. Although the state of Montana also recognizes that, under appropriate conditions, the transportation of out-of-state solid waste into Montana may not conflict with this goal, it is imperative that the state further develop regional and statewide solid waste management goals, plans, and regulations and revise its rules governing landfill siting and operation criteria before allowing solid waste importation beyond current levels.

(2) Except as provided in subsections (3) through (5), a person may not transport solid waste into Montana for disposal or incineration until October 1, 1993.

(3) A person who transported solid waste into Montana before May 22, 1989, may continue to transport solid waste into Montana subject to the limitation that the amount that person transports into Montana during any calendar year of the moratorium does not significantly exceed the amount that person transported into Montana during calendar year 1988.

(4) Notwithstanding the provisions of subsection (3), a person may transport into Montana solid waste generated in Idaho, North Dakota, South Dakota, or Wyoming for disposal in a solid waste management facility that receives 25,000 tons or less of solid waste annually.

(5) A person may transport solid waste to a research and development facility in Montana that receives federal or state research funds in order to test and evaluate waste treatment remediation technologies.

History: En. Sec. 7, Ch. 696, L. 1989; amd. Sec. 1, Ch. 649, L. 1991; amd. Sec. 1, Ch. 524, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 524 in (2), at beginning, inserted "through (5)"; inserted (4) allowing persons from certain states to transport wastes into Montana; inserted (5) allowing transport of wastes into Montana for research purposes; and made minor changes in style. Amendment effective April 24, 1993.

75-10-210. Moratorium on certain solid waste facility permits. (1) Except for remedial actions pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to 75-10-405(2)(c) or 75-10-416, until October 1, 1993, the department may not issue a license under 75-10-221 for a solid waste facility if the facility is also subject to the requirements of 75-2-215.

(2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely manner in processing solid waste applications required under 75-10-221.

History: En. Sec. 2, Ch. 16, Sp. L. July 1992.

75-10-211. Repealed. Sec. 30, Ch. 358, L. 1981.

History: En. Sec. 5, Ch. 35, L. 1965; amd. Sec. 2, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 6, Ch. 542, L. 1977; R.C.M. 1947, 69-4005.

75-10-212. Disposal in unauthorized area prohibited — exception. (1) No person may dispose of solid waste except as permitted under this part.

(2) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) in or upon any highway, road, street, or alley of this state;

(b) in or upon any public property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof or any officer or agent or department thereof;

(c) within 200 yards of such public highway, road, street, or alley or public property;

(d) on privately owned property where hunting, fishing, or other recreation is permitted, provided this subsection shall not apply to the owner, his agents, or those disposing of debris or refuse with the owner's consent.

(3) Any person in violation of this section is absolutely liable, as provided in 45-2-104, and is subject to the civil penalties provided in 75-10-233.

History: (1)En. Sec. 3, Ch. 35, L. 1965; amd. Sec. 4, Ch. 542, L. 1977; Sec. 69-4003, R.C.M. 1947; (2)En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969; Sec. 32-4410, R.C.M. 1947; R.C.M. 1947, 32-4410(1), 69-4003; amd. Sec. 4, Ch. 358, L. 1981; amd. Sec. 1, Ch. 461, L. 1991.

Cross-References

Littering on highways prohibited, 61-8-365.

Game wardens — duty to enforce, 87-1-504, 87-1-505.

Forfeiture of hunting or fishing license for littering, 87-2-112.

75-10-213. Unlawful disposition of dead animals — exception. It is unlawful to:

(1) place all or any part of a dead animal in any lake, river, creek, pond, reservoir, road, street, alley, lot, or field;

(2) place all or any part of a dead animal within 1 mile of the residence of any person unless the dead animal or part of a dead animal is burned or buried at least 2 feet underground; or

(3) being the owner, permit all or any part of a dead animal to remain in the places specified in subsections (1) and (2) of this section except as provided in subsection (2) of this section.

History: En. Sec. 95, Ch. 197, L. 1967; R.C.M. 1947, 69-4518; amd. Sec. 11, Ch. 68, L. 1979.

75-10-214. Exclusions — exceptions to exclusions. (1) (a) This part may not be construed to prohibit a person from disposing of his own solid waste that is generated in reasonable association with his household or agricultural operations upon land owned or leased by that person or covered by easement or permit as long as the disposal does not create a nuisance or public health hazard or violate the laws governing the disposal of hazardous or deleterious substances.

(b) This part does not apply to the operation of an electric generating facility, to the drilling, production, or refining of natural gas or petroleum, or to the operation of a mine, mill, smelter, or electrolytic reduction facility.

(2) The exclusions contained in subsection (1) of this section do not apply to a division of land of 5 acres or less made after July 1, 1977, that falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3.

History: En. Sec. 8, Ch. 35, L. 1965; amd. Sec. 4, Ch. 349, L. 1969; amd. Sec. 9, Ch. 542, L. 1977; R.C.M. 1947, 69-4008(1) thru (3), (5); amd. Sec. 12, Ch. 68, L. 1979; amd. Sec. 5, Ch. 358, L. 1981; amd. Sec. 12, Ch. 696, L. 1989; amd. Sec. 1, Ch. 565, L. 1991.

Cross-References

Private nuisance, 27-30-102.

Public nuisance, 27-30-102, 45-8-111.

75-10-215. Statewide household hazardous waste public education program. The department shall implement a statewide household hazardous waste public education program. The program must include but is not limited to providing information about:

(1) alternatives to disposal of household hazardous waste at municipal solid waste landfills and other disposal sites;

(2) methods of reusing or recycling household hazardous waste; and

(3) alternatives to the use of products that lead to the generation of household hazardous waste.

History: En. Sec. 2, Ch. 407, L. 1991.

Cross-References

Household hazardous waste defined, 75-10-203.

75-10-216 and 75-10-217 reserved.

75-10-218. Repealed. Sec. 6, Ch. 145, L. 1993.

History: En. Sec. 6, Ch. 696, L. 1989.

75-10-219 and 75-10-220 reserved.

75-10-221. License required — application. (1) Except as provided in 75-10-214, no person may dispose of solid waste or operate a solid waste management system without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application shall contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and such other information as the department may by rule require.

(4) The license provided for in this section is for a period not to exceed 12 months unless renewed by the department. The department may provide exceptions to the 12-month requirement for a 2-year period following July 1, 1991.

(5) The department may require submission of a new application if the department determines that the plan of operation, the management of the solid waste system, or the geological or ground water conditions have changed since the license was initially approved.

(6) In establishing fees for licenses and the review of applications, the department shall consider the volume of waste to be managed and the size of

the proposed solid waste management system. The fees must encourage reduction in the volume of waste to be managed and cover the costs to the department of initially reviewing and annually licensing the solid waste management system.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(1); amd. Sec. 6, Ch. 358, L. 1981; amd. Sec. 6, Ch. 643, L. 1991.

75-10-222. Notification of and validation by local health officer. (1) When the department receives an application for a license pursuant to the provisions of this part, the local health officer in the county where the solid waste management system will be located shall be notified in writing of the application within 15 days after the department has received the application.

(2) If the department decides to issue a license pursuant to the provisions of this part, the department shall notify the local health officer in writing.

(3) A license issued by the department under this section shall not be valid until signed by the local health officer having jurisdiction in the county in which the solid waste management system will be operated.

(4) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this part, make a final decision on whether the license will be validated.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(part).

75-10-223. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this part upon a finding that the requirements of this part and the rules implementing this part cannot be satisfied. If the local health officer refuses to validate the license, he shall notify the applicant, the department, and any other interested person in writing.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the board within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the board shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(part).

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-10-224. Revocation or denial of license by department. The department may deny or revoke a license to operate a solid waste management system after giving the applicant and the local health officer written notice and an opportunity for a hearing before the board. The decision to deny or revoke a license may be made only after a finding that a solid waste management system cannot be operated or is not being operated in compliance with this part or a rule or order issued pursuant to this part. The hearing held before the board on a denial or revocation shall be held pursuant to the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 35, L. 1965; amd. Sec. 7, Ch. 542, L. 1977; R.C.M. 1947, 69-4006.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-10-225. Repealed. Sec. 30, Ch. 358, L. 1981.

History: En. Sec. 8, Ch. 35, L. 1965; amd. Sec. 4, Ch. 349, L. 1969; amd. Sec. 9, Ch. 542, L. 1977; R.C.M. 1947, 69-4008(4).

75-10-226 reserved.

75-10-227. Administrative enforcement. (1) When the department believes that a violation of part 1 or this part, a violation of a rule adopted under part 1 or this part, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or his agent. The notice must specify the provision of law, rule, or permit alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds no violation has occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under part 1 or this part.

(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

History: En. Sec. 8, Ch. 696, L. 1989.

75-10-228. Civil penalties. (1) A person who violates any provision of this part, a rule adopted under this part, or a license provision is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Fines and penalties collected for violations of this part must be deposited in the solid waste management account provided for in 75-10-117.

History: En. Sec. 9, Ch. 696, L. 1989; (3)En. Sec. 2, Ch. 565, L. 1991.

75-10-229 and 75-10-230 reserved.

75-10-231. Actions. The department may, through the attorney general or appropriate county attorney, initiate and maintain in district court enforcement actions as provided in this part, including actions to collect a criminal penalty or to enjoin the operation of a solid waste management system that is in violation of this part or a rule adopted by the department or order issued as provided in this part.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(3).

Cross-References

Injunctions — Supreme Court original jurisdiction, 3-2-205.

Injunctions, Title 27, ch. 19.

75-10-232. Penalty for violations. (1) A person violating this part or regulations prescribed by the department under this part, except 75-10-212(2), is guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500.

(2) Each day upon which a violation occurs is a separate violation.

History: Ap. p. Sec. 9, Ch. 35, L. 1965; amd. Sec. 5, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 10, Ch. 542, L. 1977; Sec. 69-4009, R.C.M. 1947; Ap. p. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4009, 69-4519(3), (4); amd. Sec. 13, Ch. 68, L. 1979; amd. Sec. 7, Ch. 358, L. 1981.

Cross-References

Execution of a criminal fine, 46-19-102.

75-10-233. Dumping penalty — enforcement. (1) A person found guilty of a violation of 75-10-212 shall be fined in the sum not exceeding $100 or imprisoned in the county jail for a period not exceeding 30 days or be punished by both fine and imprisonment, in the discretion of the court.

(2) A person found absolutely liable under 75-10-212 is subject to a civil penalty not to exceed $5,000.

(3) The provisions of 75-10-212 shall be enforced by all highway patrol officers, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana. In addition, game wardens have the right to enforce the provisions of 75-10-212 on public property and on private property where public recreation is permitted.

History: En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969; R.C.M. 1947, 32-4410(2), (3); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 2, Ch. 461, L. 1991.

Cross-References

Local government law enforcement, Title 7, ch. 32.

Highway Patrol, Title 44, ch. 1.

Game wardens, Title 87, ch. 1, part 5.

Part 3

Detachable Beverage Container Openers

75-10-301. Definitions. As used in 75-10-302, the following definitions apply:

(1) "Beverage" means beer or other malt beverage, mineral water, soda water, tea, or carbonated soft drink in liquid form and intended for human consumption.

(2) "Container" means an individual, separate, sealed metal can containing a beverage.

History: En. Sec. 1, Ch. 185, L. 1981.

75-10-302. Detachable opening prohibited. No person may sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable when opening the container.

History: En. Sec. 2, Ch. 185, L. 1981.

75-10-303. Violations — penalty. A violation of 75-10-302 is a misdemeanor and is punishable as provided in 46-18-212. Each day on which a violation occurs is a separate offense.

History: En. Sec. 3, Ch. 185, L. 1981.

Part 4
Hazardous Waste Management

Part Cross-References

Hazardous waste/CERCLA special revenue account — bonds, 75-10-621 through 75-10-623.

Licensing of underground storage tank installers, Title 75, ch. 11, part 2.

Petroleum storage tank cleanup, Title 75, ch. 11, part 3.

75-10-401. Short title. This part shall be known and may be cited as the "Montana Hazardous Waste and Underground Storage Tank Act".

History: En. Sec. 8, Ch. 358, L. 1981; amd. Sec. 1, Ch. 384, L. 1989.

75-10-402. Findings and purpose. (1) The legislature finds that the safe and proper management of hazardous wastes, the permitting of hazardous waste facilities, and the siting of facilities are matters for statewide regulation and are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of this part and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes; to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 - 6987), as amended.

(3) The legislature also finds that petroleum products and hazardous substances stored in underground tanks are a separate category of substances that are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under the Montana Hazardous Waste and Underground Storage Tank Act. It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in 75-10-413 through 75-10-417 and other appropriate authority provided by law to remedy violations of underground storage tank requirements established under this part.

History: En. Sec. 9, Ch. 358, L. 1981; amd. Sec. 2, Ch. 384, L. 1989; amd. Sec. 1, Ch. 386, L. 1989.

Cross-References

Right to a clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-10-403. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(9) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

(10) "Manifest" means the shipping document originated and signed by the generator and which is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

(11) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(12) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under this part.

(13) "Storage" means the actual or intended containment of regulated substances, hazardous wastes, or both, either on a temporary basis or for a period of years.

(14) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(16) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(17) "Underground storage tank":

(a) means, except as provided in subsections (17)(b)(i) through (17)(b)(viii):

(i) any one or combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground;

(b) does not include:

(i) a septic tank;

(ii) a pipeline facility (including gathering lines) regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); or

(C) state law comparable to the provisions of law referred to in subsection (17)(b)(ii)(A) or (17)(b)(ii)(B), if the facility is intrastate;

(iii) a surface impoundment, pit, pond, or lagoon;

(iv) a storm water or wastewater collection system;

(v) a flow-through process tank;

(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(viii) any pipe connected to a tank described in subsections (17)(b)(i) through (17)(b)(vi).

History: En. Sec. 10, Ch. 358, L. 1981; amd. Sec. 1, Ch. 633, L. 1985; amd. Sec. 1, Ch. 562, L. 1987; amd. Sec. 3, Ch. 384, L. 1989.

75-10-404. Powers of department. (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private; and

(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste or regulated substance.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of state lands related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act administered by the department of natural resources and conservation. The integration and coordination shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section.

History: En. Sec. 11, Ch. 358, L. 1981; amd. Sec. 2, Ch. 386, L. 1989.

Cross-References

Montana Major Facility Siting Act, Title 75, ch. 20.

75-10-405. Administrative rules. (1) The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside of facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel and for financial assurance of facility owners and operators and for liability of guarantors providing financial assurance;

(h) requirements for registration of generators and transporters;

(i) establishing a schedule of fees and procedures for the collection of fees for:

(i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

(ii) hazardous waste management as provided in 75-10-433;

(iii) the reissuance and modification of hazardous waste management facility permits; and

(iv) the registration of hazardous waste generators;

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes;

(l) procedures for the assessment of administrative penalties as authorized by 75-10-424; and

(m) other rules which are necessary to obtain and maintain authorization under the federal program.

(2) The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) may require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) may require generators and facilities to report on an annual rather than on a biennial basis;

(c) may adopt requirements for the prevention and correction of leakage from underground storage tanks, including:

(i) reporting by owners and operators;

(ii) financial responsibility;

(iii) release detection, prevention, and corrective action;

(iv) standards for design, construction, installation, and closure;

(v) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program;

(vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-10-423; and

(vii) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(d) may adopt regulatory requirements for hazardous waste transfer facilities;

(e) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

(f) may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations; or

(ii) may be more restrictive than federal regulations.

History: En. Sec. 12, Ch. 358, L. 1981; amd. Sec. 1, Ch. 255, L. 1983; amd. Sec. 1, Ch. 107, L. 1985; amd. Sec. 1, Ch. 109, L. 1985; amd. Sec. 2, Ch. 633, L. 1985; amd. Sec. 1, Ch. 336, L. 1987; amd. Sec. 2, Ch. 340, L. 1987; amd. Sec. 2, Ch. 562, L. 1987; amd. Sec. 4, Ch. 384, L. 1989; amd. Sec. 1, Ch. 400, L. 1991; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 1, Ch. 281, L. 1993; amd. Sec. 1, Ch. 341, L. 1993; amd. Sec. 1, Ch. 509, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 281 inserted (2)(c)(vi) relating to penalties, notice, and appeals. Amendment effective April 7, 1993.

Chapter 341 in (1)(d), after "denial", substituted "reissuance" for "renewal"; and substituted present (1)(i) concerning establishing schedule of fees and procedures for fee collection for former language that read: "a schedule of fees for hazardous waste management facility permits and registration of hazardous waste generators". Amendment effective April 13, 1993.

Chapter 509 inserted (1)(l) authorizing Department to adopt, amend, or repeal hazardous waste rules relating to procedures for assessment of administrative penalties as authorized by 75-10-424; and made minor changes in style.

Applicability: Section 6, Ch. 281, L. 1993, provided: "[This act] applies to all department of health and environmental sciences' notices served on alleged violators pursuant to [section 3] [75-10-423] beginning October 1, 1993, or on the date of adoption of the department's rules under 75-10-405(2)(c)(vi), whichever is earlier."

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-10-406. Permits. (1) A person may not construct or operate a hazardous waste management facility without first obtaining a permit from the department for the facility, except that the department may, by rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

(3) A permit may be issued for a period specified by the department and is subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to the facility and in compliance with the provisions of this part and any applicable order of the board or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the permit, the department rules, an order of the board or the department, or the provisions of this part. Any person who is denied a permit by the department

or who has a permit revoked or modified shall be afforded an opportunity for a hearing before the board upon written application made within 30 days after service of notice of denial, revocation, or modification by mail. Service by mail is complete upon mailing.

(5) Notwithstanding any other provisions of this part, the department may, in the event of an imminent and substantial danger to public health or the environment, issue a temporary emergency permit to any person for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered by the existing facility permit. Emergency permits may be oral or written, may not exceed 90 days in duration, and may be terminated by the department at any time prior to 90 days.

(6) The department may, as it considers appropriate, grant permits by rule to classes or categories of hazardous waste management facilities where the facility owner or operator is already licensed or permitted by the department pursuant to other state environmental statutes or where an interim period exists until final administrative disposition of a permit application is made.

(7) In permits issued under this section, the department shall require corrective action for all releases of hazardous waste or constituents at a treatment, storage, or disposal facility, including corrective action for releases that extend beyond the facility boundaries if necessary to protect public health or the environment. A permit must contain a schedule of compliance for corrective action and requirements for assurance of financial responsibility for completion of the corrective action.

(8) Each permit issued by the department to a person owning or operating a facility must contain the terms and conditions the department considers necessary to protect human health and the environment.

History: En. Sec. 13, Ch. 358, L. 1981; amd. Sec. 2, Ch. 336, L. 1987; amd. Sec. 3, Ch. 386, L. 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

75-10-407. Concurrent permit and major facility siting decisions. If it is determined that an application for a certificate under the Montana Major Facility Siting Act, Title 75, chapter 20, will result in the generation, transportation, storage, or disposal of hazardous wastes as defined in 75-10-403, the department shall conduct its review under the provisions of this part concurrently with the studies of air and water quality conducted under the provisions of the Montana Major Facility Siting Act. A decision to grant or deny a permit for the treatment, storage, or disposal of hazardous wastes under the provisions of 75-10-406 is appealable concurrently with and subject to the same procedures established for the appeal of the department's air and water quality certification decision under the Montana Major Facility Siting Act. If the initial permit has been granted as specified in this section, all renewals or modifications of a permit or enforcement actions concerning alleged violations of the permit and the provisions of this part shall be conducted pursuant to the procedures and enforcement provisions established in this part.

History: En. Sec. 14, Ch. 358, L. 1981.

75-10-408. Variances — renewals. (1) A person who is a generator or transporter of hazardous wastes or who owns or operates a hazardous waste management facility may apply to the board for a variance or partial variance from the application of or compliance with any requirement of this part or any rule adopted under this part. The board may grant a variance or partial variance if it finds that:

(a) the applicant's actions or proposed actions regarding generation, transportation, treatment, storage, or disposal of hazardous wastes do not constitute a danger to public health or safety or cause substantially adverse environmental effects; and

(b) the application of or compliance with the requirement or rule would produce unreasonable hardship without equal or greater benefits to the public.

(2) No variance or partial variance may be granted except after public hearing on due notice and until the board has considered the relative interests of the applicant, other persons specifically affected, and the general public.

(3) No variance or partial variance may be granted for a period to exceed 1 year, but the variance or partial variance may be renewed for like periods if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application for renewal shall be made in the manner and upon such notice as specified in rules promulgated under this part. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) A variance, partial variance, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by a variance, partial variance, or renewal granted by the board may obtain judicial review thereof as provided by the judicial review of contested case provisions of the Montana Administrative Procedure Act.

(5) Nothing in this section and no variance, partial variance, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-10-415.

(6) Under no conditions may a variance be granted by the board that would result in a less stringent requirement or degree of control than would be imposed by the applicable federal regulations adopted under the federal Resource Conservation and Recovery Act.

History: En. Sec. 15, Ch. 358, L. 1981.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-10-409. Compliance monitoring and reporting — underground storage tank leak report. (1) The department may, as a condition of a permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this part, rules adopted under this part, any order of the board or department, and permit conditions.

(2) The department may require the owner or operator of a facility to submit reports on such compliance monitoring activities, including notice to the department of any noncompliance with permit conditions, rules adopted under this part, the provisions of this part, or any orders of the department or board.

(3) If an owner or operator of an underground storage tank discovers or is provided with evidence that the tank may have leaked, he must immediately notify the department that a leak may exist.

History: En. Sec. 16, Ch. 358, L. 1981; amd. Sec. 3, Ch. 633, L. 1985.

75-10-410. Inspections — sampling. (1) (a) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which:

(i) regulated substances are or have been stored in underground storage tanks if the department has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted under this part;

(ii) hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for transportation; or

(iii) records pertinent to the regulated substances or hazardous waste activities are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to the regulated substances or hazardous wastes for the purposes of developing rules under this part or enforcing the provisions of this part, rules adopted under this part, or a permit or an order issued under this part.

(2) In the course of an inspection under this section, the employee or agent of the department may take samples of any substances or wastes, including samples from any soil or ground water or from any vehicle in which wastes are transported, or samples of any containers or labeling for the substances or wastes. If the employee or agent of the department takes a sample of any hazardous waste or suspected hazardous waste, he shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis must be furnished to the owner, operator, or agent in charge.

History: En. Sec. 17, Ch. 358, L. 1981; amd. Sec. 5, Ch. 384, L. 1989.

Cross-References

Searches and seizures — right of private individual to be secure, Art. II, sec. 11, Mont. Const.

75-10-411. Regulated substance and hazardous waste site inventory. (1) The department is authorized to conduct an inventory of sites and locations in the state where regulated substances or hazardous wastes have been stored or disposed of at any time.

(2) If the department determines that the presence of a regulated substance or hazardous waste or the release of the regulated substance or waste or any waste constituent may present a substantial hazard to public health or the environment, it may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and

reporting with respect to the site in order to ascertain the nature and extent of the hazard.

(3) In the case of any facility or site not in operation at the time a determination is made under subsection (2) with respect to the facility or site, if the department finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, it may issue an order requiring the most recent previous owner or operator of the facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (2).

(4) An order issued under subsection (2) or (3) must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(5) If the department determines that the owner or operator referred to in subsection (2) or (3) is not able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct such activities.

(6) For the purposes of carrying out this section, the department may exercise the powers set forth in 75-10-410.

History: En. Sec. 18, Ch. 358, L. 1981; amd. Sec. 6, Ch. 384, L. 1989; amd. Sec. 4, Ch. 386, L. 1989.

75-10-412. State hazardous waste facilities. (1) The department may:

(a) if it considers such action to be necessary, establish, maintain, and operate state hazardous waste management facilities to provide for the treatment, storage, or disposal of hazardous wastes;

(b) acquire interests in real property by gift, purchase, lease, or other means in order to develop any such facility;

(c) operate and maintain such a facility directly or through agreement with public or private persons; and

(d) collect reasonable fees to defray a portion of the costs of establishing, maintaining, and operating the facility.

(2) A state facility must meet all applicable requirements for a hazardous waste management facility under this part.

History: En. Sec. 19, Ch. 358, L. 1981; amd. Sec. 2, Ch. 107, L. 1985.

75-10-413. Administrative enforcement. (1) When the department believes that a violation of this part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order previously issued. An order issued by the department or by the board may

prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on public health and welfare or the environment;

(b) initiate action under 75-10-414, 75-10-417, or 75-10-418; or

(c) for underground storage tank violations, assess administrative penalties and issue corrective action orders under 75-10-423.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

History: En. Sec. 20, Ch. 358, L. 1981; amd. Sec. 5, Ch. 386, L. 1989; amd. Sec. 2, Ch. 281, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 281 in (1), in first sentence before "by certified mail", inserted "personally or"; in (3), at beginning, inserted "In addition to or"; inserted (3)(c) relating to penalties and corrective orders for underground storage tank violations; and made minor changes in style. Amendment effective April 7, 1993.

Applicability: Section 6, Ch. 281, L. 1993, provided: "[This act] applies to all department of health and environmental sciences' notices served on alleged violators pursuant to [section 3] [75-10-423] beginning October 1, 1993, or on the date of adoption of the department's rules under 75-10-405(2)(c)(vi), whichever is earlier."

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

75-10-414. Injunctions. The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

(2) enjoin a violation of this part, a rule adopted under this part, an order of the department or the board, or a permit provision without the necessity of prior revocation of the permit; or

(3) require compliance with this part, a rule adopted under this part, an order of the department or the board, or a permit provision.

History: En. Sec. 21, Ch. 358, L. 1981; amd. Sec. 1, Ch. 108, L. 1985.

Cross-References

Injunctions — Supreme Court jurisdiction, 3-2-205.

Injunctions, Title 27, ch. 19.

75-10-415. Imminent hazard. Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any regulated substance or hazardous waste may present an imminent and substantial danger to public health or the environment, the department may commence legal proceedings to immediately restrain or enjoin any person (including any past or present generator, past or present transporter, and past or present owner or operator of a treatment, storage, or disposal facility) who has contributed to or who is contributing to such handling, storage, treatment, transportation, or disposal from engaging in such activities or order the person to take other action as may be necessary, or both. The department may also take appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect public health and the environment.

History: En. Sec. 22, Ch. 358, L. 1981; amd. Sec. 7, Ch. 384, L. 1989; amd. Sec. 6, Ch. 386, L. 1989.

75-10-416. Cleanup orders. The department may issue a cleanup order to any person who has discharged, deposited, or spilled any regulated substance or hazardous waste into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of a regulated substance or hazardous waste. The order shall direct the person to clean up and remove the regulated substance or hazardous waste, treat the regulated substance or hazardous waste so as to render it nonhazardous, or to take such other actions as may be considered reasonable by the department.

History: En. Sec. 23, Ch. 358, L. 1981; amd. Sec. 8, Ch. 384, L. 1989.

75-10-417. Civil penalties. (1) Any person who violates any provision of this part, a rule adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed $10,000 per violation. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy; or

(b) action under 75-10-418.

(4) Money collected under this section shall be deposited in the state general fund.

History: En. Sec. 24, Ch. 358, L. 1981; amd. Sec. 1, Ch. 150, L. 1985; amd. Sec. 7, Ch. 386, L. 1989.

Cross-References

Injunctions, Title 27, ch. 19.

75-10-418. Criminal penalties. (1) A person is guilty of an offense under this section if he knowingly:

(a) transports any hazardous waste to an unpermitted facility;

(b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules adopted under this part without a permit or contrary to a material permit condition;

(c) omits material information or makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

(d) generates, stores, treats, transports, disposes of, or otherwise handles any hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or

(e) transports or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest.

(2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than $25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation constitutes a separate violation.

(3) A person who knowingly violates any requirement of this part or any rule or material permit condition issued pursuant to this part (except those violations specified in subsection (1)) regarding any hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to $5,000 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(4) Upon a second conviction for a violation of this section, the maximum penalties specified in this section must be doubled.

(5) Action under this section does not bar enforcement of this part, rules made under this part, orders of the department or the board, or permits by injunction or other appropriate remedy.

(6) Money collected under this section, except money collected in a justice's court, must be deposited in the state general fund.

History: En. Sec. 25, Ch. 358, L. 1981; amd. Sec. 45, Ch. 557, L. 1987; amd. Sec. 8, Ch. 386, L. 1989.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Injunctions, Title 27, ch. 19.

Execution of criminal fine, 46-19-102.

75-10-419. Department designated agency for federal program participation — interstate cooperation. (1) The department is designated as the official agency for the state for all purposes of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended, and for the purpose of such other state or federal legislation as has or may be enacted after October 1, 1981, to assist in the management of hazardous wastes.

(2) The legislature of this state encourages cooperative activities by the department with other states for the improved management of hazardous wastes and, so far as is practicable, encourages the adoption of uniform state laws relating to the management of hazardous wastes and compacts between this and other states for the improved management of hazardous wastes. The department may enter into agreements with the responsible authorities of the United States and of other states, subject to approval by the governor, relative to policies, methods, means, and procedures to be employed in the management of hazardous wastes not inconsistent with the provisions of this part and may carry out the agreements.

History: En. Sec. 26, Ch. 358, L. 1981.

75-10-420. Venue for legal actions. All legal actions affecting hazardous waste management facilities in the state must be brought in the county in which the facility is located. All legal actions affecting underground storage tanks or the disposal of regulated substances must be brought in the county where the underground storage tank is located or, if mutually agreed upon by the affected parties, in the first judicial district, Lewis and Clark County.

History: En. Sec. 27, Ch. 358, L. 1981; amd. Sec. 9, Ch. 384, L. 1989.

75-10-421. Construction in event of conflict — remedies cumulative. (1) The provisions of this part and rules promulgated pursuant to this part govern if they conflict with other provisions of Montana law or any action taken by the department under such provisions.

(2) The remedies provided for in this part are cumulative with other remedies provided by law.

History: En. Sec. 28, Ch. 358, L. 1981.

75-10-422. Unlawful disposal. It is unlawful to dispose of hazardous waste, as defined in this part or by rule, without a permit or, if no permit is required under this part or rules adopted under this part, by any other means not authorized by law.

History: En. Sec. 9, Ch. 386, L. 1989.

75-10-423. Administrative penalties for underground storage tank violations — appeals — venue for hearings. (1) A person who violates any of the underground storage tank provisions of this chapter or any underground storage tank rules promulgated under the authority of this chapter may be assessed and ordered by the department to pay an administrative penalty not to exceed $500 per violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by Title 75, chapter 11, or by this chapter.

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on

the alleged violator or the violator's agent. For purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

(a) the provision alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the amount of the administrative penalty assessed under this section;

(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;

(e) the nature of any corrective action the department requires, whether or not a portion of the penalty is to be suspended;

(f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;

(g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and

(h) that a formal proceeding may be waived.

(3) The department shall provide each person assessed a penalty under this section an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County or the county where the alleged violation occurred. This subsection does not apply until the department gives written notice, served personally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

(a) the provision allegedly violated;

(b) the facts that constitute the alleged violation;

(c) the specific nature of any corrective action the department requires, estimated costs of compliance with the action, and where to receive help to correct the alleged violation; and

(d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.

(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the department shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under Title 75, chapter 11, or this chapter.

(6) Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any other remedy available to the department for

violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the state general fund.

History: En. Sec. 3, Ch. 281, L. 1993.

Compiler's Comments

Applicability: Section 6, Ch. 281, L. 1993, provided: "[This act] applies to all department of health and environmental sciences' notices served on alleged violators pursuant to [section 3] [75-10-423] beginning October 1, 1993, or on the date of adoption of the department's rules under 75-10-405(2)(c)(vi), whichever is earlier."

Effective Date: Section 7, Ch. 281, L, 1993, provided: "[This act] is effective on passage and approval." Approved April 7, 1993.

75-10-424. Administrative penalty. (1) The department may assess a person who violates a hazardous waste provision of this part or a hazardous waste rule adopted under this part an administrative penalty, not to exceed $10,000 per violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed $100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

(2) An administrative penalty may not be assessed under this section unless the alleged violator is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

(3) In determining the appropriate amount of an administrative penalty, the department shall consider:

(a) the gravity and the number of violations;

(b) the degree of care exercised by the alleged violator;

(c) whether significant harm resulted to public health or the environment; and

(d) the degree of potential significant harm to public health or the environment.

(4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any portion of the administrative penalty as determined by the department, the department may seek to recover the amount in an appropriate district court.

(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other appropriate remedy.

(6) Administrative penalties collected under this section must be deposited in the state general fund.

History: En. Sec. 2, Ch. 509, L. 1993.

75-10-425 through 75-10-430 reserved.

75-10-431. Definitions. As used in 75-10-432, the following definitions apply:

(1) "Class I facility" means a hazardous waste management facility that:

(a) contains one or more regulated landfill units, surface impoundments, land treatment units, incinerators, boilers, or industrial furnaces; and

(b) primarily receives hazardous waste generated by offsite sources not owned, controlled, or operated by the facility owner or operator.

(2) "Class II facility" means a hazardous waste management facility that is neither a class I facility nor a class III facility.

(3) "Class III facility" means a hazardous waste management facility that:

(a) does not contain a regulated landfill unit, surface impoundment, land treatment unit, incinerator, boiler, or industrial furnace; and

(b) primarily receives hazardous waste generated either onsite or by offsite sources that are owned, controlled, or operated by the facility owner or operator.

History: En. Sec. 2, Ch. 341, L. 1993.

Compiler's Comments

Effective Date: Section 9, Ch. 341, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 13, 1993.

75-10-432. Hazardous waste management facility filing and review fees. (1) The department may establish and collect fees for the filing and review of hazardous waste management facility permits. The fees must be based upon the following schedule:

(a) for class I facilities, a maximum fee of $150,000, payable as follows:

(i) a nonrefundable payment of $50,000 due when an applicant files for a permit;

(ii) a payment of $50,000 due when the department notifies the applicant that the application is complete; and

(iii) an additional payment of up to $50,000 for the portion of the department's actual costs of review that exceed $100,000. This payment is due 30 days after the department's final decision on the application.

(b) for class II facilities, a maximum fee of $90,000, payable as follows:

(i) a nonrefundable payment of $40,000 due when an applicant files for a permit; and

(ii) an additional payment of up to $50,000 for the portion of the department's actual costs of review that exceed $40,000. This payment is due 30 days after the department's final decision on the application.

(c) for class III facilities, a maximum fee of $25,000, payable as follows:

(i) a nonrefundable payment of $10,000 due when an applicant files for a permit; and

(ii) an additional payment of up to $15,000 for the portion of the department's actual costs of review that exceed $10,000. This payment is due 30 days after the department's final decision on the application.

(2) If, after receipt of the payment required in subsection (1)(a)(ii), the applicant notifies the department in writing of its intent to withdraw the application, the department shall return to the applicant any portion of the payment received pursuant to subsection (1)(a)(ii) in excess of the department's actual costs of permit review.

(3) The department shall deposit all fees collected pursuant to this section into an account in the state special revenue fund as provided in 75-10-434.

History: En. Sec. 3, Ch. 341, L. 1993.

Compiler's Comments

Retroactive Applicability: Section 8, Ch. 341, L. 1993, provided: "[Section 3] [75-10-432] applies retroactively, within the meaning of 1-2-109, to applications for hazardous waste management facility permits received on or after January 1, 1993."

Effective Date: Section 9, Ch. 341, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 13, 1993.

75-10-433. Hazardous waste management fees. (1) An owner or operator of a hazardous waste management facility that primarily receives waste generated by offsite sources that are not owned, controlled, or operated by the facility owner or operator or site owner shall collect from generators and remit quarterly to the department a fee of:

(a) $8 per ton on all hazardous waste received at the facility or site for management in regulated landfill units, surface impoundments, land treatment units, incinerators, boilers, or industrial furnaces; and

(b) $4 per ton on all hazardous waste received at the facility or site for management in any regulated unit or units other than those units described in subsection (1)(a).

(2) The fees established in subsection (1) may be prorated for amounts of hazardous waste received that are less than 1 ton in weight.

(3) The department shall remit 15% of the fees received under this section from a facility to the county in which the facility is located. The county may use the money for the purpose of implementing hazardous material or hazardous waste monitoring and response programs.

(4) The department shall deposit all fees collected under this section, except fees paid to a county, into an account in the state special revenue fund as provided in 75-10-434.

History: En. Sec. 4, Ch. 341, L. 1993.

Compiler's Comments

Effective Date: Section 9, Ch. 341, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 13, 1993.

75-10-434. Deposit of hazardous waste management fees. (1) There must be credited to an account within the state special revenue fund established in 17-2-102:

(a) all fees collected under 75-10-432; and

(b) all fees collected under 75-10-433, except fees paid to a county.

(2) Money in the account may be used by the department only for the administration of the hazardous waste provisions of this part.

History: En. Sec. 5, Ch. 341, L. 1993.

Compiler's Comments

Effective Date: Section 9, Ch. 341, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 13, 1993.

75-10-435 through 75-10-440 reserved.

75-10-441. Hazardous waste site — public hearing required before operation. (1) The owner or manager of a proposed commercial facility for the storage, collection, or transfer of hazardous waste (whether or not the proposed facility is subject to permitting under 75-10-406) shall conduct a public hearing in the nearest population center to provide information and answer questions on:

(a) facility plans and operating procedures;

(b) emergency response plans and the manner in which neighboring population densities have been considered in the facility siting decision;

(c) the kinds of substances to be handled and any applicable state and federal requirements for the provision of public information on these substances;

(d) procedures that will be used to inform the public of any changes in the kinds of substances to be handled; and

(e) any other matters related to the operation of the facility that are pertinent to protecting public health, safety, and the environment.

(2) The hearing must be conducted no later than 60 days prior to the commencement of commercial hazardous waste storage, collection, or transfer operations at the facility.

(3) The hearing must be preceded by written notice:

(a) posted in no fewer than 25 locations of high public visibility and geographically distributed in neighborhoods within one-half mile of the facility;

(b) published in a newspaper of general circulation once a week for the 3 weeks immediately preceding the hearing; and

(c) delivered to the department not less than 30 days prior to the hearing.

History: En. Sec. 1, Ch. 340, L. 1987.

75-10-442. Moratorium on certain hazardous waste facility permits. (1) Until October 1, 1993, the department may not issue a permit under 75-10-406 for a boiler or industrial furnace that burns hazardous waste or hazardous waste-derived fuel.

(2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely manner in adopting rules implementing 75-10-406 and in processing applications required under 75-10-406.

History: En. Sec. 3, Ch. 16, Sp. L. July 1992.

75-10-443 through 75-10-446 reserved.

75-10-447. Underground storage tank special revenue account. (1) There is an underground storage tank account within the state special revenue fund established in 17-2-102. There must be paid into the account:

(a) revenues from underground storage tank permit and notification fees; and

(b) corrective action costs, damages, and penalties recovered under section 9003 of the federal Resource Conservation and Recovery Act of 1976, as amended.

(2) Appropriations may be made from the underground storage tank account for the following purposes only:

(a) state and local government costs of implementing the underground storage tank leak prevention program;

(b) state and local government costs relating to the investigation of leaking underground storage tanks; or

(c) state costs relating to the administration of the administrative penalty program.

History: En. Sec. 10, Ch. 384, L. 1989; amd. Sec. 4, Ch. 281, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 281 inserted (2)(c) relating to state's cost of administering the penalty program; and made minor changes in style. Amendment effective April 7, 1993.

Applicability: Section 6, Ch. 281, L. 1993, provided: "[This act] applies to all department of health and environmental sciences' notices served on alleged violators pursuant to [section 3] [75-10-423] beginning October 1, 1993, or on the date of adoption of the department's rules under 75-10-405(2)(c)(vi), whichever is earlier."

75-10-448 through 75-10-450 reserved.

75-10-451. Halogenated solvents — sale restricted — proof of registration required — procedure. (1) It is unlawful for any person to distribute, sell, or offer for sale within the state quantities of 20 gallons or more of halogenated solvent annually to a single purchaser for commercial or government use unless the purchaser possesses proof of registration with the department.

(2) It is unlawful for any person to annually use 20 gallons or more of a halogenated solvent for commercial purposes without registering with the department.

(3) Under this section, halogenated solvents include but are not limited to solvents containing tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, and other hazardous wastes referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 and F002, as amended.

(4) To register with the department, a person or government unit shall file a statement indicating the following:

(a) the person's or government unit's name and business address;

(b) the estimated volume of halogenated solvent used annually for commercial or government purposes; and

(c) the method of waste disposal in accordance with requirements specified by department rules, including:

(i) treatment or disposal in an onsite facility;

(ii) delivery to an appropriate offsite storage, treatment, or disposal facility;

(iii) beneficial use or reuse; or

(iv) legitimate recycling or reclamation.

(5) Pursuant to the requirements of subsection (4), the department shall:

(a) notify affected persons and government units of the requirements;

(b) prepare and distribute forms for the statement;

(c) prepare and distribute information to assist persons and government units in selecting appropriate methods to use, dispose of, or reuse waste halogenated solvents; and

(d) register any person or government unit who files a completed statement.

(6) This section does not authorize the department to impose new or additional requirements for waste disposal on commercial or government users of halogenated solvents.

History: En. Sec. 1, Ch. 117, L. 1989.

Part 5

Motor Vehicle Recycling and Disposal

Part Cross-References

Beauty of the state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

75-10-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Junk vehicle" means a discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, which is not lawfully and validly licensed and remains inoperative or incapable of being driven.

(5) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

(6) "Motor vehicle wrecking facility" means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(9) "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view.

History: **En. Sec. 1, Ch. 410, L. 1973; amd. Sec. 1, Ch. 251, L. 1977; amd. Sec. 1, Ch. 252, L. 1977; R.C.M. 1947, 69-6801; amd. Sec. 1, Ch. 28, L. 1983; amd. Sec. 1, Ch. 572, L. 1991.**

75-10-502. Possession of junk vehicles as prima facie evidence of motor vehicle wrecking facility. Possession at a single location of four or more junk vehicles of a type required to be licensed is prima facie evidence that the possessor is operating a motor vehicle wrecking facility.

History: **En. Sec. 3, Ch. 410, L. 1973; amd. Sec. 3, Ch. 252, L. 1977; R.C.M. 1947, 69-6803.**

75-10-503. Adoption of rules. (1) The department shall adopt rules necessary for the administration of this part, except 75-10-520, including but not limited to rules pertaining to:

(a) the establishment, control, operation, and licensing of motor vehicle wrecking facilities and graveyards;

(b) the control of junk vehicles in locations other than motor vehicle wrecking facilities and graveyards;

(c) the inspection and evaluation of premises and records subject to or required by this part;

(d) the development of budget and fiscal forms and procedures for counties;

(e) the review, approval, and control procedures for county motor vehicle graveyards developed under this part; and

(f) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule which requires any motor vehicle wrecking facility that existed prior to July 1, 1973, and has been continuously utilized thereafter as a motor vehicle wrecking facility to construct a fence or manmade barrier which would be in excess of 12 feet in height.

(2) The department of health and environmental sciences shall adopt rules authorizing the sale of junk vehicles by county motor vehicle graveyards to licensed motor vehicle wrecking facilities. The department shall adopt these rules no later than July 1, 1992.

History: (1)En. Sec. 8, Ch. 410, L. 1973; amd. Sec. 6, Ch. 252, L. 1977; R.C.M. 1947, 69-6808(part); amd. Sec. 2, Ch. 28, L. 1983; (2)En. Sec. 1, Ch. 698, L. 1989; amd. Sec. 2, Ch. 572, L. 1991.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-10-504. Shielding — new facility. A motor vehicle wrecking facility or graveyard site established or proposed on or after July 1, 1973, may not be approved for use or licensed if the proposed facility cannot be shielded from public view on the date it is initially established or proposed to the department for licensure. The prohibition concerning approval of a new motor vehicle wrecking facility or graveyard site does not apply to a facility site that was licensed as such at any time within the 18 months immediately preceding the date an application is made for licensure of such site.

History: En. Sec. 8, Ch. 410, L. 1973; amd. Sec. 6, Ch. 252, L. 1977; R.C.M. 1947, 69-6808(part); amd. Sec. 3, Ch. 28, L. 1983.

Cross-References

Rules governing shielding by Department of Health and Environmental Sciences, 75-15-222.

75-10-505. Shielding and removal of junk vehicles generally. Notwithstanding the provisions of this part, any person possessing one or more junk vehicles, regardless of ownership, shall shield the vehicles from public view or remove the vehicles to a licensed motor vehicle wrecking facility or to a licensed motor vehicle graveyard after the vehicles are released from the owner. Small accumulations of salvageable vehicles or component parts, none of which are offered for sale, retained by active farming or ranching operations for repair and maintenance of vehicles, or agricultural equipment used in their operations, are exempted from this requirement.

History: En. Sec. 6, Ch. 572, L. 1991.

Cross-References

Component part defined, 75-10-501.

75-10-506 through 75-10-510 reserved.

75-10-511. Motor vehicle wrecking facility and motor vehicle graveyard licenses. (1) A person may not conduct, maintain, or operate a motor vehicle wrecking facility or motor vehicle graveyard without a license issued by the department.

(2) Application for the license shall be made on forms furnished by the department.

(3) An annual fee of $50 shall be paid to the department for the license or quarterly prorated for new facilities.

(4) A motor vehicle graveyard is excluded from paying the annual license fee but must meet all other requirements of the part.

(5) A license shall be displayed in a prominent place in the licensed facility or graveyard.

(6) The license expires on December 31 of the year issued.

(7) If a motor vehicle wrecking facility ceases to do business, the license shall be surrendered to the department. The license is not transferable.

History: En. Sec. 2, Ch. 410, L. 1973; amd. Sec. 2, Ch. 252, L. 1977; R.C.M. 1947, 69-6802(1) thru (6).

75-10-512. Records required of facilities. (1) Each motor vehicle wrecking facility shall maintain books or files in which are kept a record and description of every junk vehicle obtained by it, together with the name and address of the person from whom the vehicle was purchased.

(2) This record must also contain:

(a) the certificate of ownership, sheriff's certificate of sale, notarized bill of sale from the former owner or person selling the vehicle, release of ownership or interest in the motor vehicle, or sheriff's release;

(b) the name of the state where the vehicle was last registered;

(c) the make of the vehicle;

(d) the vehicle identification number as defined in 61-3-210 or the motor number, identification number, or serial number;

(e) the date purchased;

(f) the disposition of the vehicle.

(3) An authorized representative of the department of justice who presents credentials may also inspect, have access to, and copy records required under this section.

History: En. Sec. 4, Ch. 410, L. 1973; R.C.M. 1947, 69-6804(1), (2); amd. Sec. 1, Ch. 427, L. 1985; amd. Sec. 5, Ch. 725, L. 1991; amd. Sec. 76, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 in (2)(d) inserted reference to vehicle identification number as defined in 61-3-210; and made minor changes in style.

75-10-513. Disposal of junk vehicles — fees and records. (1) When a motor vehicle wrecking facility submits a junk vehicle to the disposal program, it shall pay a disposal fee of $2 for each vehicle submitted, and the vehicle is then the property of the state.

(2) Quarterly, each wrecking facility shall mail to the department of justice a list, on a form approved by the department of justice, of all junk vehicles received during the quarter, stating the year, make, and the complete identification number of each vehicle. Any certificate of ownership received for junk vehicles must accompany each list. The department of justice shall

issue a receipt of [for] the certificate of ownership if requested by the licensed facility, and such receipt may serve as an instrument for reclaiming the certificate of ownership if the vehicle is rebuilt.

(3) A motor vehicle graveyard shall submit to the department the records, documents, and other information concerning junk vehicles received by it that are required by rules of the department.

History: **En. Sec. 4, Ch. 410, L. 1973; R.C.M. 1947, 69-6804(3); amd. Sec. 2, Ch. 427, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.**

75-10-514. Denial, suspension, or revocation of license — grounds. The department may deny, suspend, or revoke a motor vehicle wrecking facility's license when it proves the business:

(1) sold or otherwise disposed of a motor vehicle, trailer, or any part thereof when it knew the vehicle or part was stolen or was appropriated without the consent of the owner;

(2) committed forgery on a certificate of title covering a vehicle that has been reassembled from parts obtained from the disassembling of other vehicles;

(3) committed any illegal act or omission which has caused loss as the result of a sale of a motor vehicle, trailer, or part thereof;

(4) failed to comply with this part or with a rule of the department;

(5) obtained a license fraudulently.

History: **En. Sec. 9, Ch. 410, L. 1973; R.C.M. 1947, 69-6809.**

75-10-515. Appeals. A decision by the department to issue, deny, or revoke a motor vehicle wrecking facility or graveyard license may be appealed to the board within 30 days after receipt of official notice of the department's decision.

History: **En. Sec. 2, Ch. 410, L. 1973; amd. Sec. 2, Ch. 252, L. 1977; R.C.M. 1947, 69-6802(7).**

75-10-516. Motor vehicle wrecking facilities and motor vehicle graveyards — licensing process — decision criteria. (1) When an application for a motor vehicle wrecking facility or motor vehicle graveyard is filed with the department, the department shall notify by mail:

(a) each owner of property adjoining the proposed facility;

(b) the governing body of the county in which the proposed facility is to be located; and

(c) a newspaper of general circulation in the area where the proposed facility is to be located.

(2) Within 30 days of receipt of the notification in subsection (1)(b), the governing body of the county may:

(a) conduct a public hearing to determine whether the proposed facility will significantly affect the quality of life of adjoining landowners and the surrounding community; and

(b) adopt a resolution in support of or opposition to the location of the proposed facility and transmit a copy of the resolution to the department.

(3) The department may not grant a license to a facility that a governing body has opposed under subsection (2)(b).

(4) In making its decision to grant or deny a license application, the department shall consider the effect of the proposed facility on adjoining landowners and land uses.

History: **En. Sec. 1, Ch. 607, L. 1991.**

Cross-References

Motor vehicle graveyard and motor vehicle wrecking facility defined, 75-10-501.

75-10-517 through 75-10-519 reserved.

75-10-520. Disposal of damaged vehicle when insurance company settles at total loss. An insurance company settling an insurance claim on a damaged motor vehicle as a total loss less salvage may dispose of the motor vehicle at a motor vehicle wrecking facility only if it is licensed under the provisions of 75-10-511.

History: **En Sec. 1, Ch. 244, L. 1979.**

Cross-References

Transfer of ownership of vehicle by insurance company, 61-3-205.

75-10-521. Powers and duties of county motor vehicle recycling and disposal programs. (1) (a) Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. The property may be acquired by purchase, lease, or otherwise.

(b) As an alternative, the county may contract for the maintenance and operation of a motor vehicle graveyard or graveyards, but any such contract may be entered into only with a motor vehicle wrecking facility licensed under the provisions of this part.

(2) Two or more counties may join to form a district for the purpose stated in this section. If a district is formed, all provisions of this part pertaining to a county also apply to a district formed under this subsection.

(3) When there is an accumulation of at least 200 junk vehicles in the graveyard, the county shall notify the department for disposal purposes.

(4) The county commissioners of each county shall designate a representative to be responsible for implementing this part.

(5) Each county, through its designated representative, shall inspect each licensed motor vehicle wrecking facility within its boundaries, consistent with rules adopted by the department.

(6) Each county may sell junk vehicles from the motor vehicle graveyard to licensed motor vehicle wrecking facilities. The sales may be conducted only pursuant to a plan that has been approved by the department for consistency with its rules.

(7) A county shall submit to the department for approval a plan for the collection of junk vehicles and the establishment and operation of the motor vehicle graveyard.

(8) The county shall submit to the department for approval a proposed budget for the succeeding fiscal year. The budget shall be for the amounts required by the county for collection costs, acquisition, maintenance, and operation of the graveyard and for other duties relating to implementation of this part. Any proposed change in the budget or plan must be approved by the department.

History: En. Sec. 5, Ch. 410, L. 1973; amd. Sec. 2, Ch. 251, L. 1977; R.C.M. 1947, 69-6805; amd. Sec. 3, Ch. 572, L. 1991.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

75-10-522. Use of motor vehicle graveyards by individuals. An individual may dispose of a junk vehicle by delivering the vehicle to a motor vehicle graveyard and by delivering to the department the certificate or evidence of title to the vehicle or a written release of the vehicle.

History: En. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; R.C.M. 1947, 69-6806(4).

Cross-References

Certificates of ownership, Title 61, ch. 3, part 2.

75-10-523 through 75-10-530 reserved.

75-10-531. Crushing and recycling of junk vehicles. (1) The department shall contract for final disposition of junk vehicles accumulated in motor vehicle graveyards and shall provide for crushing and recycling the material from the vehicles.

(2) The department may also contract to dispose of, by crushing and recycling, junk vehicles accumulated in the yard of a motor vehicle wrecking facility. The department may so contract only upon the request of the facility and only if there is an accumulation of at least 200 vehicles at the facility.

History: En. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; R.C.M. 1947, 69-6806(1), (2).

75-10-532. Disposition of moneys collected. All moneys received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for:

(1) the control, collection, recycling, and disposal of junk vehicles and component parts; and

(2) implementation by the department of health and environmental sciences during the 1987 biennium of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with 75-10-601 through 75-10-604, and the Montana Hazardous Waste Act in accordance with 75-10-401 through 75-10-421, up to an amount not exceeding $58,690.

History: Ap. p. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; Sec. 69-6806, R.C.M. 1947; Ap. p. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; Sec. 69-6807, R.C.M. 1947; R.C.M. 1947, 69-6806(3), 69-6807(1); amd. Sec. 5, Ch. 241, L. 1983; amd. Sec. 4, Ch. 633, L. 1985; amd. Sec. 2, Ch. 718, L. 1985.

75-10-533. Department to report fees. The department shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the amount collected under this part and 61-3-508 and the cost of administration of this part, except 75-10-520, to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected.

History: En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1945, 69-6807(3); amd. Sec. 50, Ch. 112, L. 1991; amd. Sec. 44, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 near beginning, after "shall", substituted "report to the office of budget and program planning, as a part of the information required by 17-7-111" for "as provided in 5-11-210, report to each legislature".

75-10-534. Department to pay approved county budget. The department shall pay to a county the amount of the approved junk vehicle collection and graveyard budget of the county. The yearly payment may not exceed $1 for each motor vehicle under 8,001 pounds gross vehicle weight that is licensed in that county. However, for those counties that have fewer than 5,000 such motor vehicles, the department may pay up to $5,000, providing the county can justify this payment. Counties realizing revenue from the sale of junk vehicles shall return to the state junk vehicle program revenue account money equal to the salvage value of each vehicle sold. The salvage value of a vehicle must be the average contract value of a crushed ton of junk vehicles as determined by the statewide salvage bids received by the department during the current fiscal year. Any additional revenue realized from the sale of junk vehicles may be retained by the county for use in the county's junk vehicle program in addition to the approved junk vehicle collection and graveyard budget of the county.

History: En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1945, 69-6807(4); amd. Sec. 4, Ch. 572, L. 1991.

75-10-535 through 75-10-540 reserved.

75-10-541. Injunction — action to collect civil penalty — authority of department of justice. (1) The department may sue to enjoin the operation or maintenance of a motor vehicle wrecking facility or graveyard either permanently or until compliance with this part, the rules of the department, or an order issued pursuant to this part has been demonstrated.

(2) The department may sue in district court to collect a civil penalty as provided in 75-10-542.

(3) Upon request of the department, the attorney general or the county attorney of the county in which a motor vehicle wrecking facility or graveyard is located may petition the district court to enjoin further operation or maintenance of a motor vehicle wrecking facility or graveyard or to impose, assess, and recover a civil penalty, as appropriate.

(4) The department of justice, through the attorney general or the county attorney of the county in which a facility is located, may sue in district court to collect a civil penalty as provided in 75-10-542 for violations of 75-10-512 or 75-10-513(2) discovered during department of justice inspections.

History: En. Sec. 10, Ch. 410, L. 1973; amd. Sec. 7, Ch. 252, L. 1977; R.C.M. 1947, 69-6810; amd. Sec. 5, Ch. 572, L. 1991; amd. Sec. 6, Ch. 725, L. 1991.

Cross-References

Injunctions, Title 27, ch. 19.

75-10-542. Penalties. (1) A person who willfully violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined not to exceed $250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued as provided in this part shall be subject to a civil penalty of not more than $50. Each day upon which a violation of this part or a rule or order occurs is a separate violation.

History: En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977; R.C.M. 1947, 69-6812.

Cross-References

Execution of a criminal fine, 46-19-102.

Part 6
State Participation in CERCLA

Part Cross-References

Allocation of junk vehicle regulatory fees to Department for implementation of this part, 75-10-532.

75-10-601. Purpose. The legislature finds that the existence of hazardous substances and contaminants in the environment and hazardous waste disposal sites poses a significant health hazard through potential and actual contamination of the environment. This part is therefore enacted to protect the public health, safety, and welfare through cooperation with the federal government under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide for the disposal and control of such hazardous substances and contaminants in a safe and environmentally sound manner.

History: En. Sec. 1, Ch. 241, L. 1983.

75-10-602. Definitions. As used in this part, the following definitions apply:

(1) "CERCLA" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510.

(2) "Contaminant" includes but is not limited to any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction), or physical deformations in such organisms or their offspring. The term does not include petroleum (including crude oil or any fraction thereof that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and such synthetic gas.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) (a) "Hazardous substance" means:

(i) any substance designated pursuant to section 311(b)(2)(A) of the federal Water Pollution Control Act;

(ii) any element, compound, mixture, solution, or substance designated a hazardous substance by regulations promulgated by the administrator of the federal environmental protection agency pursuant to section 102 of CERCLA;

(iii) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the federal Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by act of congress);

(iv) any toxic pollutant listed under section 307(a) of the federal Water Pollution Control Act;

(v) any hazardous air pollutant listed under section 112 of the federal Clean Air Act; and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the environmental protection agency has taken action pursuant to section 7 of the federal Toxic Substances Control Act.

(b) The term does not include petroleum (including crude oil or any fraction thereof that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of natural gas and such synthetic gas.

(5) "Hazardous waste" means a solid waste or combination of solid wastes which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(6) "President" means the president of the United States.

(7) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes:

(a) any release that results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons;

(b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(c) (i) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under section 170 of that act; or

(ii) for the purposes of section 104 of CERCLA or any other response action, any release of source byproduct or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the federal Uranium Mill Tailings Radiation Control Act of 1978; and

(d) the normal application of fertilizer.

(8) "Remedial action" means those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment that prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to the present or future public health or welfare or the environment. The term includes but is not limited to such actions at the location of the release as storage; confinement; perimeter protection using dikes, trenches, or ditches; clay cover; neutralization; cleanup of released hazardous substances or contaminated materials; recycling or reuse; diversion; destruction; segregation of reactive wastes; dredging or excavations; repair or replacement of leaking containers; collection of leachate and runoff; onsite treatment or incineration; provision of alternative water supplies; and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities if the president determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or is otherwise necessary to protect the public health or welfare. The term does not include offsite transport of hazardous substances or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the president determines that such actions:

(a) are more cost-effective than other remedial actions;

(b) will create a new capacity to manage, in compliance with subtitle C of the federal Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or

(c) are necessary to protect public health or welfare or the environment from a present or potential risk that may be created by further exposure to the continued presence of such substances or materials.

History: En. Sec. 2, Ch. 241, L. 1983.

75-10-603. Cooperative agreement — authority of department. (1) In order to assist in implementation of CERCLA, the department may:

(a) participate in the determination of appropriate remedial action to deal with the release or threatened release within Montana of:

(i) any contaminant presenting an imminent and substantial danger to public health or welfare; or

(ii) any hazardous substance;

(b) in the event of the release or threatened release of any of the substances described in subsection (1)(a), negotiate the terms of a cooperative agreement with the federal government containing mutual commitments of each party to remedial action, including the elements required by subsection (2).

(2) A cooperative agreement may contain the following assurances:

(a) the state of Montana will assure the future maintenance of the removal and remedial actions agreed upon for the expected life of the actions;

(b) a hazardous waste disposal facility is available to the state of Montana that meets the specifications of the president and complies with the requirements of subtitle C of the federal Solid Waste Disposal Act for necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and

(c) the state of Montana will pay or assure payment of a share of the costs of the remedial action, including all future maintenance.

History: En. Sec. 3, Ch. 241, L. 1983; amd. Sec. 77, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 in (2), in introductory clause, substituted "may" for "must"; and made minor changes in style.

75-10-604. Cooperative agreement — when effective. (1) If a cooperative agreement requires expenditure of state and federal funds which, together with the monetary obligation contained in any prior cooperative agreement made during the same biennium, exceeds the amount appropriated for that biennium for implementation of this part, the agreement is not effective until it is approved by the legislature and an appropriation is made providing the level of funding necessitated by the agreement.

(2) A cooperative agreement that does not require expenditure of funds exceeding the appropriation for the biennium for implementation of this part is effective when signed by the governor and the president or their respective representatives.

History: En. Sec. 4, Ch. 241, L. 1983.

75-10-605 through 75-10-620 reserved.

75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenues obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on those revenues;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds thereof; and

(c) revenues from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) funds are statutorily appropriated, as provided in 17-7-502(4), to the CERCLA match debt service account necessary to make principal, interest, and premium payments due on CERCLA bonds;

(b) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the administration of the environmental sciences division of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(c) to the extent funds are available after the appropriations in subsections (3)(a) and (3)(b), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(c), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match such federal funds as may become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Unused balances remain in the account until such time as appropriated by the legislature for the purposes specified in this section.

History: En. Sec. 2, Ch. 408, L. 1987; amd. Sec. 15, Ch. 787, L. 1991.

75-10-622. CERCLA match debt service fund. (1) There is a CERCLA match debt service fund within the debt service fund type established in 17-2-102.

(2) The state pledges, allocates, and directs to be credited to the CERCLA match debt service fund as received an amount necessary to satisfy principal and interest payments due on outstanding CERCLA bonds.

History: En. Sec. 3, Ch. 408, L. 1987.

75-10-623. CERCLA bonds. (1) When authorized by the legislature and within limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell CERCLA bonds of the state in the amount and manner it considers necessary and proper to finance the match requirements under section 104 of CERCLA and to finance the match requirements for federal money for underground storage tank corrective action. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of CERCLA bonds may be issued by the board of examiners upon request of the department of health and environmental sciences, at public or private sale, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to

both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board of examiners determines subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of CERCLA bonds, the interest rates, maturities, and any mandatory redemption provisions thereof must be established in such manner that the funds then specifically pledged and appropriated by law to the CERCLA match debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. Such bonds, notes, and any interest coupons appurtenant thereto must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hazardous waste/CERCLA special revenue account established in 75-10-621.

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members.

History: En. Sec. 4, Ch. 408, L. 1987.

75-10-624 reserved.

75-10-625. Authorization for sale of CERCLA bonds. The board of examiners is authorized to issue and sell CERCLA general obligation bonds in an amount not exceeding $10 million upon the request of the department of health and environmental sciences, as provided for in 75-10-623. Proceeds of the bonds or notes are appropriated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621 to fund state participation in remedial action under section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuance of the bonds or notes.

History: En. Sec. 1, Ch. 435, L. 1987.

75-10-626. Agreement with department of health and environmental sciences. For the proceeds of bonds or notes authorized and appropriated by this act, the board of examiners and the department of health and environmental sciences may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves as may be required under such bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for the purposes presented in section 1 must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding, if required. Payments by the department must be made from funds available therefor.

History: En. Sec. 2, Ch. 435, L. 1987.

75-10-627. Benefit of state. The agreement made pursuant to 75-10-626 is solely for the benefit of the state of Montana and is not enforceable by bondholders or other third-party beneficiaries.

History: En. Sec. 3, Ch. 435, L. 1987; amd. Sec. 75, Ch. 83, L. 1989.

75-10-628. Department of health and environmental sciences — bond payment. The department of health and environmental sciences shall transfer to the department of administration, after issuance of bonds and prior to the payment date, sufficient funds to retire general obligation bonds authorized by the 50th legislature and issued by the board of examiners. This payment obligation is for the benefit of the state and is not enforceable by bondholders.

History: En. Sec. 4, Ch. 435, L. 1987.

Part 7

Remedial Action Upon Release of Hazardous Substance

Part Compiler's Comments

Preamble: The preamble attached to Ch. 354, L. 1993, provided: "WHEREAS, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 authorizes the state, as trustee, to collect damages for state natural resources injured by the release of hazardous substances; and

WHEREAS, Chapter 711, Laws of 1985, as amended by Chapter 709, Laws of 1989, and Chapter 752, Laws of 1991, established the state proceedings for claims and actions for damages to natural resources from releases of hazardous substances, known as the Comprehensive Environmental Cleanup and Responsibility Act; and

WHEREAS, the State of Montana filed suit in United States District Court on December 22, 1983, against Atlantic Richfield Company for damages to natural resources in the Clark Fork River Basin; and

WHEREAS, a natural resource damage litigation program policy committee has been formed to oversee the litigation and the expenditure of the funds; and

WHEREAS, the court-ordered schedule requires the parties to complete discovery by September 27, 1994, and be prepared for trial in this matter by July 14, 1995."

Natural Resource Damage Program Authorization and Appropriation of Loan Proceeds: Section 1, Ch. 354, L. 1993, provided: "There is authorized to the department of health and environmental sciences from the coal severance tax permanent fund for fiscal years 1994 and 1995 a loan in the amount of $2,619,076, the proceeds of which are appropriated for the biennium ending June 30, 1995, for the purpose of conducting the litigation and natural resource damage claim against the atlantic richfield company (ARCO). Repayment of this loan is extended through the end of the 1995 biennium in accordance with 17-2-107. The repayment must include interest on the amount loaned at a rate commensurate with rates earned in the long-term investment pool."

Natural Resource Damage Program Reauthorization: Section 2, Ch. 354, L. 1993, provided: "(1) There is authorized to the department of health and environmental sciences from the coal severance tax permanent fund for fiscal years 1994 and 1995 a loan that was authorized for fiscal years 1992 and 1993 from the general fund in the amount of $4,928,894, for the purpose of conducting the natural resource damage assessment and the litigation of the natural resource damage claim against the atlantic richfield company (ARCO). There is also authorized to the department for fiscal year 1994 a loan from the coal severance tax permanent fund in the amount of $246,135, which represents the interest lost by the general fund because of the $4,928,894 loan for fiscal years 1992 and 1993.

(2) The department shall repay to the general fund the amount of $4,928,894, plus interest in the amount of $246,135 that was lost by the general fund because of the loan, from the proceeds of the loans authorized in subsection (1). The repayment to the general fund must be made upon receipt of the loans authorized by subsection (1)."

Legislative Oversight: Section 7, Ch. 354, L. 1993, provided: "The speaker of the house and the president of the senate shall each appoint two members of their respective bodies, one from each party, to meet quarterly for briefings on the progress of the Montana-ARCO litigation and negotiations. The committee shall also consider plans for appropriate utilization of any money received by the state as a result of the litigation. Staff assistance for the committee must be provided by the department of health and environmental sciences. Committee expenses must be paid from the appropriation in [section 1] [not codified, see 1993 compiler's comment]."

Part Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Director" means the director of the department of health and environmental sciences.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fund" means the environmental quality protection fund established in 75-10-704.

(6) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other such resources within the state of Montana owned, managed, held in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(11) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes

releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

(12) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

(13) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

(14) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection (14)(a) to provide services relating to a remedial action.

(15) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies.

History: En. Sec. 1, Ch. 711, L. 1985; amd. Sec. 1, Ch. 274, L. 1989; amd. Sec. 3, Ch. 709, L. 1989; amd. Sec. 52, Ch. 16, L. 1991.

75-10-702. Rulemaking authority. The department is authorized to adopt rules for the implementation of this part.

History: En. Sec. 7, Ch. 711, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

75-10-703. Actions — general provisions. (1) No action taken by any person to contain or remove a release, whether the action is taken voluntarily or at the request of the department or its designee, may be construed as an admission of liability for the discharge.

(2) Actions taken by the department pursuant to 75-10-711 and 75-10-712 are not subject to the public bidding requirements of Title 18.

History: En. Sec. 5, Ch. 711, L. 1985.

75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature; and

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

History: En. Sec. 2, Ch. 711, L. 1985; amd. Sec. 11, Ch. 711, L. 1985; amd. Sec. 2, Ch. 555, L. 1987; amd. Sec. 1, Ch. 675, L. 1989; amd. Sec. 4, Ch. 709, L. 1989; amd. Sec. 53, Ch. 16, L. 1991; amd. Sec. 51, Ch. 112, L. 1991; amd. Sec. 1, Ch. 752, L. 1991; amd. Sec. 45, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 deleted (7) that read: "(7) The department shall, as provided in 5-11-210, submit to the legislature a complete financial report on the fund, including a description of all expenditures made since the preceding report"; and made minor changes in style.

Cross-References

Fund structure, 17-2-102.

75-10-705. Short title. This part may be cited as the "Comprehensive Environmental Cleanup and Responsibility Act".

History: En. Sec. 1, Ch. 709, L. 1989.

75-10-706. Purpose. The purposes of this part are to:

(1) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;

(2) encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and

(3) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.

History: En. Sec. 2, Ch. 709, L. 1989.

75-10-707. Information gathering and access. (1) The department may undertake any investigative or other information-gathering action that it considers necessary or appropriate for determining the need for remedial action, choosing or taking a remedial action, or otherwise enforcing the provisions of this part.

(2) Any authorized officer, employee, or representative of the department may require a person who has or may have information relevant to a release or threatened release of a hazardous or deleterious substance to furnish, upon request, any information or documents relating to but not limited to the following matters:

(a) the identification, nature, and quantity of a hazardous or deleterious substance that has been or is being generated, treated, stored, or disposed of at or transported from a facility;

(b) the nature or extent of a release or threatened release of a hazardous or deleterious substance at or from a facility;

(c) information relating to the ability of a person to pay for or to perform a cleanup; and

(d) any other information relevant to the department's determination of the appropriate remedial action to be taken or to the enforcement of this part.

(3) For purposes of assisting the department in acquiring information relevant to the need for, the determination of, or the taking of remedial action or otherwise enforcing the provisions of this part, any authorized officer, employee, or representative of the department is authorized to:

(a) enter or have access at reasonable times to any facility or other place or property where:

(i) a hazardous or deleterious substance may be or has been generated, stored, treated, disposed of, or transported from;

(ii) there has been or may be a release of a hazardous or deleterious substance;

(iii) records or other relevant information regarding a release or threatened release is located;

(iv) entry is necessary to determine the need for any appropriate remedial action; or

(v) entry is necessary to effectuate a remedial action under this part; and

(b) inspect and obtain samples from the facility or other place or property referred to in subsection (3)(a) or from any location where a suspected hazardous or deleterious substance may be located. Any authorized officer, employee, or representative of the department is authorized to inspect and obtain samples of containers or labeling for suspected hazardous or deleterious substances. Each such inspection must be completed with reasonable promptness. If the authorized officer, employee, or representative obtains samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of such samples must be furnished promptly to the owner, operator, tenant, or other person in charge if such person can be located.

(4) The department may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents relating to the matters in 75-10-707(2)(a) through (2)(d). The method for service of subpoenas and payment of witness fees and mileage is the same

as that required in civil actions in the district courts of the state. In case of a refusal to obey a subpoena issued and served upon a person pursuant to this subsection, the district court for a district in which the person is found, resides, or transacts business, upon application of the department and after notice to the person, has jurisdiction to issue an order requiring the person to appear and either give testimony or produce documents, or both, before a hearing officer. A failure to obey the order of the court may be punished by the court as a contempt.

(5) If consent is not granted regarding a request made by an authorized officer, employee, or representative under this section, the director of the department may issue an order directing compliance with the request.

(6) The department may commence a civil action to compel compliance with an order issued pursuant to this section.

(7) In any action commenced pursuant to subsection (6) when the court determines that there may be an imminent and substantial threat to public health, safety, or welfare or the environment, the court shall enjoin any activity that constitutes a failure to comply with the order and shall direct compliance with the order unless, under the circumstances of the case, the order is arbitrary and capricious or otherwise not in accordance with law.

(8) Persons subject to the requirements of this section may make a written claim of confidentiality for information unique to the owner or operator of a facility that would, if disclosed, reveal methods or processes entitled to protection as trade secrets. The claim of confidentiality must be clearly designated on the materials at the time they are obtained by the department. If the department accepts the characterization, it shall maintain that information as confidential. Information describing physical or chemical characteristics of hazardous or deleterious substances that have been or may be released into the environment are not considered confidential. The department has access to and may use any trade secret information in carrying out the activities of this part as may be necessary to protect the public health, safety, or welfare or the environment while maintaining the information as confidential.

History: En. Sec. 5, Ch. 709, L. 1989.

75-10-708 through 75-10-710 reserved.

75-10-711. Remedial action — orders — penalties — judicial proceedings. (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1).

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information-gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and

the extent and imminence of the danger to the public health, safety, or welfare or the environment.

(3) Any person liable under 75-10-715(1) must take immediate action to contain, remove, and abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) the person or persons determined by the department to be liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice to each person informs him that if he is subsequently found liable pursuant to 75-10-715(1), he may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to 75-10-715(3).

(4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release that may pose an imminent and substantial threat to public health, safety, or welfare or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect public health, safety, or welfare or the environment.

(5) A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require. Civil penalties collected under this subsection must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the ad-

ministrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release.

(9) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part.

History: En. Sec. 3, Ch. 711, L. 1985; amd. Sec. 6, Ch. 709, L. 1989; amd. Sec. 2, Ch. 752, L. 1991.

Cross-References

Injunctions, Title 27, ch. 19.

Nuisances, public and private, Title 27, ch. 30.

75-10-712. Emergency action. If the department determines that immediate response to an imminent threat to public health, safety, or welfare or the environment is necessary to avoid substantial injury or damage to persons, property, or resources, remedial action may be taken pursuant to 75-10-711(1) without the prior written notice required by 75-10-711(3). The department shall give subsequent written notice to the person liable under 75-10-715(1) within 5 days after the action is taken, describing the circumstances which required the action to be taken without prior notice.

History: En. Sec. 4, Ch. 711, L. 1985; amd. Sec. 7, Ch. 709, L. 1989.

75-10-713. Public notice of remedial action, administrative order, or consent decree — comments — meeting — response. (1) (a) Except as provided in 75-10-712, before final approval by the director of the department of any administrative order on consent, issued pursuant to 75-10-711, or before judicial approval of a consent decree issued pursuant to this part, the department shall:

(i) publish a notice and brief description of the proposed order or decree in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public;

(ii) provide at least 30 days (or whatever additional time the department may in its discretion grant upon written request) for submission of written comments regarding the proposed order or decree and upon written request by 10 or more persons or by a group having 10 or more members (but not including a liable person), conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed order or decree; and

(iii) consider and respond to relevant written or verbal comments properly submitted during the comment period or at the public meeting.

(b) The administrative record supporting the department's approved order or decree must contain the department's response summary prepared pursuant to subsection (1)(a)(iii).

(2) Except as provided in 75-10-712, upon making a final decision regarding the proposed remedial action, order, or decree, the department shall publish notice, as provided under subsection (1), and make copies of the final decision on the approved order or decree available to the public.

(3) Except as provided in 75-10-712, the department shall:

(a) notify the county commissioners and governing bodies of cities, towns, and consolidated local governments impacted by a proposed remedial action; and

(b) at the request of the county commissioners or the governing body of a city or town or of a consolidated local government impacted by a remedial action, conduct a public meeting.

History: En. Sec. 15, Ch. 709, L. 1989; amd. Sec. 3, Ch. 752, L. 1991.

75-10-714. Administrative penalties. (1) In lieu of proceeding under 75-10-711(5), the department may assess penalties of not more than $1,000 per day per violation against a person liable under 75-10-715(1) for a release or threat of release who has failed or refused to comply with an order issued by the department pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order issued by the department pursuant to 75-10-707(5).

(2) In determining the amount of any penalty assessed pursuant to this section, the department shall take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require.

(3) An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The notice and opportunity for a hearing must conform to the requirements of Title 2, chapter 4, part 6.

(4) A person against whom a penalty is assessed under this section may obtain judicial review of the penalty as provided for in Title 2, chapter 4, part 7.

(5) Administrative penalties payable under this section must be deposited in the environmental quality protection fund established in 75-10-704.

History: En. Sec. 9, Ch. 709, L. 1989.

75-10-715. Liability — reimbursement and penalties — proceedings — defenses. (1) Notwithstanding any other provision of law and subject only to the defenses set forth in subsection (5), the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

(2) A person identified in subsection (1) is liable for the following costs:

(a) all remedial action costs incurred by the state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license and the project or facility was being operated within the terms of its permit or license.

(3) If the person liable under 75-10-715(1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.

(4) The department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1) through (3). Proceedings to recover costs and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the person liable under 75-10-715(1) resides or has its principal place of business or in the district court of the first judicial district.

(5) No person is liable under subsections (1) through (3) if that person can establish by a preponderance of the evidence that:

(a) the department failed to follow the notice provisions of 75-10-711 when required;

(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed any hazardous or deleterious substance or over which the person had any ownership, authority, or control and was not caused by any action or omission of the person;

(c) the release or threatened release occurred solely as a result of:

(i) an act or omission of a third party other than either an employee or agent of the person; or

(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that he:

(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;

(d) the release or threat of release occurred solely as the result of an act of God or an act of war;

(e) the release or threatened release was from a facility for which a permit had been issued by the department, the hazardous or deleterious substance was specifically identified in the permit, and the release was within the limits allowed in the permit;

(f) in the case of assessment of penalties under subsection (3), that factors beyond the control of the person prevented the person from taking timely remedial action; or

(g) the person accepted only household refuse (garbage, trash, or septic tank sanitary wastes generated by single or multiple residences, hotels, motels, restaurants, or similar facilities) for transport to a solid waste disposal facility, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.

(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The person acquired the facility by inheritance or bequest.

(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that he has satisfied the requirements of subsections (5)(c)(i) or (5)(c)(ii).

(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:

(i) any specialized knowledge or experience on the part of the person;

(ii) the relationship of the purchase price to the value of the property if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the property;

(iv) the obviousness of the presence or the likely presence of contamination on the property; and

(v) the ability to detect the contamination by appropriate inspection.

(d) (i) Nothing in subsections (5)(b) and (5)(c) or in this subsection (6) may diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing the knowledge, the previous owner is liable under subsections (1) through (3) and no defense under subsection (5)(b) or (5)(c) is available to that person.

(e) Nothing in this subsection (6) affects the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility.

History: En. Sec. 6, Ch. 711, L. 1985; amd. Sec. 11, Ch. 711, L. 1985; amd. Sec. 3, Ch. 555, L. 1987; amd. Sec. 10, Ch. 709, L. 1989.

Cross-References

Fund structure, 17-2-102.

75-10-716. Definitions. As used in 75-10-717 and this section, the following definitions apply:

(1) "Emergency responder" means a public safety agency or a private entity acting under a request from or authority granted by a government agency, including law enforcement, firefighting, ambulance or medical, and civil defense, that provides services in an emergency situation.

(2) "Hazardous material incident" means a release involving a hazardous or deleterious substance that endangers property, public health, or public safety.

History: En. Sec. 1, Ch. 464, L. 1991.

75-10-717. Recovery of costs. An emergency responder has the right to recover from the responsible party the emergency responder's full costs directly related to a hazardous material incident.

History: En. Sec. 2, Ch. 464, L. 1991.

75-10-718. Liability of remedial action contractor. (1) A person who is a remedial action contractor with respect to a release or threatened release of a hazardous or deleterious substance is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss or damage to property, or economic loss.

(2) Immunity from liability, pursuant to subsection (1), does not apply in the case of a release that is caused by conduct of the remedial action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(3) This section does not affect the liability of a person under a warranty under federal, state, or common law or the liability to an employee of an employer who is a remedial action contractor under any provision of law, including any provision of a law relating to workers' compensation.

(4) A state agency, state employee, or an employee of a political subdivision who provides services relating to remedial action while acting within the scope of its or his authority as a governmental agency or employee has the same exemption from liability as is provided to the remedial action contractor under this section.

(5) The defense provided by 75-10-715(5)(c) is not available to a person liable under 75-10-715(1) with respect to remedial action costs or damages caused by an act or omission of a remedial action contractor.

(6) Except as provided in subsections (4) and (5), this section does not affect the liability under this part of a person other than a remedial action contractor.

(7) This section does not affect the plaintiff's burden of establishing liability under this part.

(8) This section does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance.

History: En. Sec. 8, Ch. 709, L. 1989; amd. Sec. 54, Ch. 16, L. 1991.

75-10-719. Settlement — bar to contribution liability. (1) A person who has resolved his liability to the state arising under 75-10-715 or section 107(a)(1) through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1) through (a)(4), in an administrative or judicially approved settlement is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons unless its terms provide a discharge. The terms of the settlement may reduce the potential liability of the other potentially liable persons by the amount of the settlement.

(2) If the state has obtained less than complete relief from a person who has resolved his liability to the state in an administrative or judicially approved settlement, the state may bring an action against any other person who has not resolved his liability.

(3) A person who has resolved, in whole or in part, his liability to the state for the release or for remedial action costs in an administrative or judicially approved settlement may seek contribution from a person who is not party to a settlement referred to in subsection (1).

(4) Whenever practicable and in the public interest, as determined by the director of the department, the department may, as promptly as possible, reach a final settlement with a person liable under 75-10-715 in an administrative or civil action under 75-10-711 if the settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the department, the conditions in either of the following subsection (4)(a) or (4)(b) are met:

(a) Both of the following are minimal in comparison to other hazardous or deleterious substances at the facility:

(i) the amount of the hazardous or deleterious substances contributed by that person to the facility;

(ii) the toxic or other hazardous effects of the substances contributed by that person to the facility.

(b) (i) The person:

(A) is the owner of the real property on or in which the facility is located;

(B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance at the facility; and

(C) did not contribute to the release or threat of release of a hazardous or deleterious substance at the facility through any action or omission.

(ii) This subsection (4)(b) does not apply if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

(5) As part of an administrative or judicially approved settlement agreement, the department may require the liable person to provide financial assurance, in an amount determined by the department, to ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability.

History: En. Sec. 11, Ch. 709, L. 1989; amd. Sec. 4, Ch. 752, L. 1991.

75-10-720. Condemnation — creation of state lien. (1) Whenever the department determines that property upon which a release or threatened release of a hazardous or deleterious substance has occurred may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment, the department may condemn the property for public use to mitigate the threat. The taking of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30, parts 1 through 3.

(2) All costs, penalties, and natural resource damages for which a person has been judicially determined to be liable to the state pursuant to 75-10-715 constitute a lien in favor of the state upon all property and rights to the property that belong to the person.

(3) The lien imposed by this section arises at the time notice incorporating a description of the property subject to the remedial action and an identification of the amount of costs, penalties, and natural resource damages is duly filed with the clerk and recorder of the county in which the real property is located. A copy of the notice must be served by certified mail upon the liable person.

(4) The costs, penalties, and natural resource damages constituting the lien may be recovered in an action in the district court for the district in which the property is located or in which the remedial action is occurring or has occurred. This section does not affect the right of the state to bring an action against a person to recover all costs, penalties, and natural resource damages

for which that person is liable under this part or any other provision of state or federal law.

(5) The lien must continue until the liability for the costs and damages incurred as a result of the release of a hazardous or deleterious substance is satisfied.

History: **En. Sec. 12, Ch. 709, L. 1989.**

75-10-721. Degree of cleanup required — permit exemption — financial assurance. (1) A remedial action performed under this part must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures present and future protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

(a) shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) shall consider and may require cleanup consistent with substantive state or federal environmental requirements, criteria, or limitations that are well-suited to the site conditions; and

(c) shall select remedial actions that, at a minimum, protect public health, safety, and welfare and the environment and that:

(i) use permanent solutions;

(ii) use alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

(iii) are cost-effective, taking into account the total short- and long-term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required.

(3) The department may exempt any portion of a remedial action that is conducted entirely on site from a state or local permit that would, in the absence of the remedial action, be required if the remedial action is carried out in accordance with the standards established under subsection (1) and this part.

(4) The department may require financial assurance from a liable person in an amount that the department determines will ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability.

History: **En. Sec. 13, Ch. 709, L. 1989; amd. Sec. 5, Ch. 752, L. 1991.**

75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department shall require a person liable under 75-10-715 to pay the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department within 60 days after receipt of notice that the

costs and penalties are due, the department shall bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) An action to recover remedial action costs may be brought under this section at any time after any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs that is binding on any subsequent action or actions to recover further remedial action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part.

(5) An initial action for recovery of remedial action costs must be commenced within 6 years after initiation of physical onsite construction of the remedial action.

(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704.

History: En. Sec. 14, Ch. 709, L. 1989.

75-10-723. Agreements to perform remedial action. (1) To expedite effective remedial actions and minimize litigation, the department, in its discretion and whenever practicable and in the public interest, may negotiate and enter into an agreement with any person, including the owner or operator of the facility from which a release emanates, to perform a remedial action if the department determines that the action will be properly done by the person. The agreement must contain terms and conditions that the department in its discretion determines to be appropriate.

(2) Whenever the department enters into an agreement under this section for remedial action or for assessment or payment of natural resource damages, the agreement must be filed in an appropriate district court as a consent decree and must be available for public comment for at least 30 days.

(3) A decision of the department to enter into or not enter into agreements under this section is not subject to judicial review.

History: En. Sec. 16, Ch. 709, L. 1989.

75-10-724. Liability apportionment and contribution. (1) Any person held jointly and severally liable under 75-10-715 has the right at trial to have the trier of fact apportion liability among the parties as provided in this section. The burden is on each liable person to show how his liability should be apportioned. In apportioning the liability of any person under this section, the trier of fact shall consider the following:

(a) the extent to which the person's contribution to the release of a hazardous or deleterious substance can be distinguished;

(b) the amount of hazardous or deleterious substance involved;

(c) the degree of toxicity of the hazardous or deleterious substance involved;

(d) the degree of involvement of and care exercised by the person in manufacturing, treating, transporting, or disposing of the hazardous or deleterious substance;

(e) the degree of cooperation by the person with federal, state, or local officials to prevent any harm to the public health, safety, or welfare or the environment; and

(f) knowledge by the person of the hazardous nature of the substance.

(2) If a person is held jointly and severally liable under 75-10-715 and establishes a proportionate share of the aggregate liability, the person has the right of contribution from any other liable person. If for any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing person's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing person.

History: En. Sec. 17, Ch. 709, L. 1989.

Part 8
Integrated Waste Management

Part Cross-References

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Energy-related and ecological tax incentives, Title 15, ch. 32.

Notice of motor oil recycling center, 75-10-1101.

75-10-801. Short title. This part may be cited as the "Montana Integrated Waste Management Act".

History: En. Sec. 1, Ch. 222, L. 1991.

75-10-802. Definitions. As used in this part, the following definitions apply:

(1) "Composting" means the controlled biological decomposition of organic matter into humus.

(2) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(3) "Integrated waste management" means the coordinated use of a priority of waste management methods, including waste prevention, as specified in 75-10-804.

(4) "Postconsumer material" means only those paper products generated by a consumer that have served their intended end uses and have been separated or diverted from the solid waste stream.

(5) "Recycling" means all activities involving the collection of recyclable material, including but not limited to glass, paper, or plastic; the processing of recyclables to prepare them for resale; the marketing of recovered material for use in the manufacture of similar or different products; and the purchase of products containing recycled material.

(6) "Special waste" means solid waste that has unique handling, transportation, or disposal requirements to ensure protection of the public health, safety, and welfare and the environment.

(7) "Waste reduction" means practices that decrease the weight, volume, or toxicity of material entering the solid waste management stream after consumer or commercial use but prior to incineration or disposal.

History: En. Sec. 2, Ch. 222, L. 1991.

75-10-803. Solid waste reduction target. It is the goal of the state, by January 1, 1996, to reduce by at least 25% the volume of solid waste that is either disposed of in a landfill or incinerated.

History: En. Sec. 3, Ch. 222, L. 1991.

75-10-804. Integrated waste management priorities. It is the policy of the state to plan for and implement an integrated approach to solid waste management, which must be based upon the following order of priority:

(1) reduction of waste generated at the source;

(2) reuse of waste;

(3) recycling of waste;

(4) composting of biodegradable waste; and

(5) landfill disposal or incineration.

History: En. Sec. 4, Ch. 222, L. 1991.

75-10-805. State government source reduction and recycling program. (1) In order to progress toward achieving the waste reduction target identified in 75-10-803, each state agency, the legislature, and the university system shall:

(a) prepare a source reduction and recycling plan by January 1, 1992, to reduce the solid waste generated by state government. This plan must be submitted to the department and must include, at a minimum, provisions for the composting of yard wastes and the recycling of office and computer paper, cardboard, used motor oil, and other materials produced by the state for which recycling markets exist or may be developed.

(b) establish and implement a source reduction and recycling program by July 1, 1992; and

(c) apply computer technology to reduce the generation of waste paper through:

(i) the use of electronic bulletin boards;

(ii) the transfer of information in electronic rather than paper form; and

(iii) other applications of computer technology.

(2) The plan must be evaluated every 5 years and updated as necessary.

History: En. Sec. 5, Ch. 222, L. 1991.

75-10-806. State government procurement of recycled supplies and materials. (1) The department of administration shall write purchasing specifications that incorporate requirements for the purchase of materials and supplies made from recycled materials if the use is technologically practical and reasonably cost-effective. By January 1, 1992, these requirements must be incorporated into the purchase of:

(a) paper and paper products;

(b) plastic and plastic products;

(c) glass and glass products;

(d) automobile and truck tires;

(e) motor oil and lubricants; and

(f) other materials and supplies as determined by the department of administration.

(2) It is the goal of the state that by January 1, 1996, 95% of the paper and paper products used by state agencies, universities, and the legislature must be made from recycled material that maximizes postconsumer material content.

(3) Prior to January 1, 1996, the state shall, to the maximum extent possible, purchase for use by state agencies paper and paper products that contain postconsumer material rather than new material.

(4) To the extent practical, guidelines for the recycled material content of paper should be consistent with nationwide standards for recycled paper.

(5) The department and the department of administration shall establish a joint recycling market development task force. Task force membership must include but is not limited to representatives of the recycling industry, wholesalers, state agencies, and citizen and environmental organizations, as well as other interested persons. The task force shall:

(a) assist the department of administration in developing purchasing specifications as required in subsection (1);

(b) develop additional mechanisms for state government to develop markets for recycled materials;

(c) identify procurement barriers that discriminate against the purchase of supplies and products that contain recycled material; and

(d) develop recommendations for an informational program designed to educate state employees on how to reduce waste and recycle in the workplace.

History: En. Sec. 6, Ch. 222, L. 1991.

75-10-807. Requirement to prepare and implement state solid waste management plan. (1) As a basis for developing an integrated waste management program and ensuring adequate disposal capacity, the department shall prepare and implement a state solid waste management plan in accordance with this part.

(2) The plan must be comprehensive and integrated and must include at least the following elements:

(a) a capacity assurance element that identifies existing disposal capacity, estimates waste generation rates, and determines the disposal capacity needed for the future and that assesses the potential effect of interstate disposal on capacity;

(b) an element that incorporates federal regulations 40 CFR, parts 257 and 258;

(c) an element that identifies the role of each of the components of the integrated waste management priorities contained in 75-10-804 in meeting the solid waste reduction target in 75-10-803;

(d) a technology assessment element that assesses the availability and practicality of alternative technologies for solid waste management;

(e) an education and public information element that identifies existing education and information programs and describes how the state will increase the awareness and cooperation of the public in environmentally safe solid waste management;

(f) a special waste and household hazardous waste element that identifies types and quantities of wastes that create special disposal problems and recommends methods for reducing, handling, collecting, transporting, and disposing of those wastes and that identifies existing and future strategies for managing those wastes;

(g) an element that identifies the needs of rural communities and management strategies to address those needs;

(h) an element that identifies mechanisms to ensure proper training of landfill operators; and

(i) a timeline and implementation strategy for each of the plan elements.

(3) The plan must be developed with the involvement of local officials, citizens, solid waste and recycling industries, environmental organizations, and others involved in the management of solid waste.

(4) The department shall conduct hearings as provided in 75-10-111.

(5) The plan must be evaluated every 5 years and updated as necessary.

History: En. Sec. 7, Ch. 222, L. 1991.

Part 9

Megalandfill Siting Act

Part Cross-References

Montana Environmental Policy Act, Title 75, ch. 1, parts 1 through 3.

The Montana Solid Waste Management Act, Title 75, ch. 10, part 2.

75-10-901. Short title. Sections 75-10-901 through 75-10-945 may be cited as the "Montana Megalandfill Siting Act".

History: En. Sec. 1, Ch. 468, L. 1991.

75-10-902. Purpose. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environment from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) The construction of solid waste facilities that dispose of over 200,000 tons of waste a year (megalandfills) may be necessary to meet increasing state and national needs for solid waste disposal capacity. However, due to the volume of waste processed, megalandfills may adversely affect the environment, surrounding communities, and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of megalandfills will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a megalandfill may not be constructed or operated within this state without a certificate of site acceptability pursuant to 75-10-916 and a license to operate acquired pursuant to 75-10-221 and 75-10-933.

History: En. Sec. 2, Ch. 468, L. 1991.

75-10-903. Definitions. As used in 75-10-901 through 75-10-945, the following definitions apply:

(1) "Application" means an application for a certificate and license submitted in accordance with 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935 and the rules adopted under 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935.

(2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(3) "Certificate" means the certificate of site acceptability issued by the board under 75-10-916 that is required for siting a megalandfill.

(4) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site, except that the term does not mean changes for securing geological data, including necessary borings to ascertain subsurface conditions;

(b) the modification or upgrading of an existing solid waste disposal facility into a megalandfill, except that the term does not pertain to maintenance or repair of an existing facility.

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any water, including ground waters.

(7) (a) "Megalandfill" or "facility" means, except as provided in subsection (7)(b), any new or existing solid waste landfill facility that accepts more than 200,000 tons a year of solid waste or any ash monofill that accepts 35,000 tons or more a year of solid waste incinerator ash, either fly ash or bottom ash.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(8) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(9) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood products or wood byproducts; and inert materials.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

(10) "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles.

History: En. Sec. 3, Ch. 468, L. 1991; amd. Sec. 1, Ch. 338, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 338 near beginning of definition of megalandfill or facility inserted exception clause and inserted (b) to provide that certain existing landfills are not considered megalandfills or facilities until they accept more than 300,000 tons of solid waste a year.

75-10-904 and 75-10-905 reserved.

75-10-906. Adoption of rules by board. The board may adopt rules implementing the certification provisions of 75-10-901 through 75-10-945, including rules regarding the filing and contents of the application, proof of service and notice requirements, environmental factors to be evaluated, filing fee, hearings process, and other components of the certificate and certification process that the board considers necessary.

History: **En. Sec. 4, Ch. 468, L. 1991.**

75-10-907. Adoption of rules by department. The department may adopt rules implementing the licensing provisions of 75-10-901 through 75-10-945, including rules regarding the contents of the application, monitoring, and other components of the license and licensing process that the department considers necessary.

History: **En. Sec. 5, Ch. 468, L. 1991.**

75-10-908. Contracts for information. (1) The department may contract with a potential applicant under 75-10-901 through 75-10-945 in advance of the filing of a formal application for the development of information or the provision of services by the department required under 75-10-901 through 75-10-945.

(2) Payments made to the department under a contract must be credited against the fee payable under 75-10-921.

History: **En. Sec. 6, Ch. 468, L. 1991.**

75-10-909. Grants, gifts, and funds. The department may receive grants, gifts, and other funds from any public or private source to assist in its activities under 75-10-901 through 75-10-945.

History: **En. Sec. 7, Ch. 468, L. 1991.**

75-10-910. Money to solid waste management account. All fees, taxes, fines, and penalties collected under 75-10-901 through 75-10-945, except those collected by a justice's court, must be deposited in the solid waste management account as provided in 75-10-117 for use by the department in carrying out its functions and responsibilities related to solid waste management.

History: **En. Sec. 8, Ch. 468, L. 1991.**

75-10-911 and 75-10-912 reserved.

75-10-913. Annual long-range plan submitted — contents — available to public. (1) A person may not file an application for a certificate of site acceptability required by 75-10-916 unless the megalandfill has been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

(2) The annual long-range plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the person for which construction is projected during the ensuing 2 years, as well as those facilities to be closed during the planning period;

(b) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(c) projections of the demand for the service rendered by the person and an explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(d) additional information that the department by rule, on its own initiative, or upon the advice of interested state agencies requests in order to carry out the purposes of 75-10-901 through 75-10-945.

(3) The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) is proposed to be located and must be made available to the public by the department. The applicant shall give public notice throughout the state by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. The plan must also be filed with the environmental quality council, the department of transportation, the department of state lands, the department of fish, wildlife, and parks, the department of commerce, and the department of natural resources and conservation. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan.

History: En. Sec. 9, Ch. 468, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

75-10-914. Study of included facilities. If a person identifies a proposed facility in its long-range plan, submitted pursuant to 75-10-913, as one on which construction is proposed within the 2-year period following submission of the plan, the department shall begin to examine and evaluate the proposed site to determine whether construction of the proposed facility would unduly impair the environmental, social, and economic values described in 75-10-920. The study may be continued until a person files an application for a certificate under 75-10-916. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate and a license.

History: En. Sec. 10, Ch. 468, L. 1991.

75-10-915 reserved.

75-10-916. Certificate required. (1) A person may not construct a megalandfill in the state without first applying for and obtaining a certificate of site acceptability from the board.

(2) A certificate may only be issued pursuant to 75-10-916 through 75-10-930.

History: En. Sec. 11, Ch. 468, L. 1991.

75-10-917. Certificate transferable. A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, conditions, and modifications contained in 75-10-901 through 75-10-945.

History: En. Sec. 12, Ch. 468, L. 1991.

75-10-918. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under 75-10-916 in a form the board requires, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental, social, and economic impacts of the facility;

(iii) a description of at least three reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) baseline data for the primary and reasonable alternate locations;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of 75-10-901 through 75-10-945; and

(vi) other information that the applicant considers relevant or that the board by order or rule may require or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, each county commissioner, city or county planning board, and solid waste district, and each federal agency charged with the duty of protecting the environment or of planning land use located in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of fish, wildlife, and parks;

(c) department of state lands;

(d) department of commerce;

(e) department of transportation; and

(f) department of natural resources and conservation.

(3) An application must be accompanied by proof that public notice was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located by publication of a summary of the application in newspapers of general circulation that will substantially inform those persons of the application.

History: En. Sec. 13, Ch. 468, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

75-10-919. Supplemental material — amendments. (1) An application for an amendment of an application or a certificate must be in a form and contain information as the board by rule or the department by order prescribes. Notice of an amendment must be given as provided in 75-10-918(3) and (4).

(2) An application may be amended by an applicant any time prior to the report made by the department under 75-10-922. If the proposed amendment prevents the department from carrying out its duties and responsibilities under 75-10-901 through 75-10-945, the department may require additional filing fees as the department determines necessary or may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide details with respect to an item described in the original application. This supplemental material may be submitted without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required is conclusive.

History: En. Sec. 14, Ch. 468, L. 1991.

75-10-920. Environmental, social, and economic factors evaluated during certification. In evaluating applications for a certificate of site acceptability, the department shall give consideration to the following list of factors and regulations, where applicable, and may by rule add to the factors enumerated in this section:

(1) siting criteria for municipal solid waste landfills consistent with federal requirements as described in 40 CFR part 258;

(2) siting criteria described under the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, and rules adopted under that part;

(3) the Montana solid waste management plan;

(4) solid waste disposal needs, including:

(a) availability and desirability of alternative methods of solid waste disposal in lieu of the proposed facility;

(b) promotional activities of the applicant that may have given rise to the need for the facility;

(c) social changes resulting from the facility, including protection of public health and environmental quality; and

(d) integrated waste management activities that could reduce the need for additional solid waste disposal capacity;

(5) land use impacts, including:

(a) the area of land required and its ultimate use;

(b) consistency with state and regional solid waste plans;

(c) consistency with existing and projected nearby land use;

(d) alternative uses of the site;

(e) the impact on the population already in the area and the population attracted by construction or operation of the facility;

(f) the impact of availability of solid waste disposal at the facility on growth patterns and population dispersal;

(g) construction materials and practices, including quality control and quality assurance plans to be followed during construction of all phases of the proposed facility;

(h) scenic impacts;

(i) the effects on natural systems, wildlife, and plant life;

(j) the impacts on important historic, architectural, archaeological, and cultural areas and features;

(k) the impacts on public facilities and accommodations;

(l) opportunities for joint use with solid waste disposal-intensive industries; and

(m) the economic impact on the local area, local government infrastructure, and existing industry;

(6) water resources impacts, including:

(a) hydrologic studies of the adequacy of water supply and the impact of the facility on streamflow, lakes, and reservoirs;

(b) hydrologic studies of the impact of the facility on ground water, including vadose zone studies describing the potential for leachate to migrate from the facility to ground water;

(c) an inventory of effluents, including physical, chemical, and biological characteristics;

(d) hydrologic studies of effects of effluents on receiving waters;

(e) the effect of the facility on water quality;

(f) the facility's projected water uses;

(g) the effects on plant and animal life, including algae, macroinvertebrates, and fish population;

(h) effects on unique or otherwise significant ecosystems, such as wetlands; and

(i) ground water, vadose zone, and methane gas monitoring systems and programs;

(7) characteristics of solid wastes that will be disposed of at the facility, including:

(a) the rate of solid waste disposal;

(b) the solid waste handling practices proposed to be used;

(c) the present and expected future physical and chemical characteristics of the solid waste; and

(d) inspection practices for preventing the illegal dumping of hazardous waste into the facility;

(8) transportation practices, including:

(a) route and mode of transporting waste;

(b) environmental, social, and economic impacts of transportation facilities; and

(c) transfer facilities.

History: En. Sec. 15, Ch. 468, L. 1991.

75-10-921. Filing fee — accountability — refund — use. (1) (a) The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application for a certificate. The filing fee must be deposited in the solid waste management account for the use of the department in administering 75-10-901 through 75-10-945. The initial filing fee may not exceed the following scale based upon the megalandfill's projected annual tonnage of waste:

(i) a base fee of $40,000; plus

(ii) 20 cents per ton for every ton of waste over 200,000 tons for a new or existing megalandfill or facility not subject to 75-10-903(7)(b); or

(iii) 20 cents per ton of waste over 300,000 tons for an existing megalandfill or facility pursuant to 75-10-903(7)(b).

(b) The department may allow a credit against the fee payable under this section for the applicant's costs of developing information or providing services required under 75-10-901 through 75-10-945 or required for preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, part 1, or the National Environmental Policy Act, 42 U.S.C. 4321, et seq. The applicant may submit the information or a description of the services performed to the department, together with an accounting of the expenses incurred in preparing the information or performing the services. The department shall evaluate the applicability, validity, and usefulness of the data or services and determine the expenses that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that the amount to be credited is necessary to carry out its responsibilities under 75-10-901 through 75-10-945.

(2) (a) The department may contract with an applicant after the filing of a formal application for the development of information or the provision of services required under 75-10-901 through 75-10-945. The contract may continue an agreement entered into pursuant to 75-10-908. Payments made to the department under a contract must be credited against the fee payable under this section. The revenue derived from the filing fee must be sufficient to enable the department and the board to carry out their responsibilities under 75-10-901 through 75-10-945. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department; however, an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The applicant is entitled to an accounting of money spent and to a refund with interest at the rate of 6% a year of the portion of the filing fee not spent by the department in carrying out its responsibilities under 75-10-901 through 75-10-945. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(4) The revenue derived from the filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out other responsibilities of the department and the board under 75-10-901 through 75-10-945.

History: En. Sec. 16, Ch. 468, L. 1991; amd. Sec. 2, Ch. 338, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 338 in (1)(a)(ii), after "200,000 tons", inserted "for a new or existing megalandfill or facility not subject to 75-10-903(7)(b)"; and inserted (1)(a)(iii) establishing a fee for an existing megalandfill or facility pursuant to 75-10-903(7)(b).

75-10-922. Study, evaluation, and report on proposed facility. (1) After receipt of an application, the department shall within 90 days notify the applicant in writing that:

(a) the application is accepted as complete; or

(b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through 75-10-922, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-10-929. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Within 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, if applicable.

History: En. Sec. 17, Ch. 468, L. 1991.

75-10-923. Voiding of application. An application may be voided by the department for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by 75-10-918 and the rules adopted under 75-10-918; or

(3) failure to deposit the filing fee as provided in 75-10-921.

History: En. Sec. 18, Ch. 468, L. 1991.

75-10-924. Hearing date — location — department to act as staff. (1) Upon receipt of the department's report submitted under 75-10-922, the board shall set a date for a hearing to begin not more than 120 days after receipt of the report. A certification hearing must be conducted by the board in Helena or in the county seat of the county in which the facility or the greatest portion of the facility is to be located.

(2) Except as provided in 75-10-926, the department shall act as the staff for the board throughout the decisionmaking process and the board may request that the department present testimony or cross-examine witnesses as the board considers necessary and appropriate.

History: En. Sec. 19, Ch. 468, L. 1991.

75-10-925. Certificate amendments. (1) Within 30 days after notice of an amendment to a certificate is given as provided in 75-10-919, including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental, social, and economic impacts caused by the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a material increase in any environmental impact caused by the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After the hearing, the board shall grant, deny, or modify the amendment with conditions it considers appropriate.

(2) In cases where the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall grant the amendment either as applied for or upon terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material

increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

History: En. Sec. 20, Ch. 468, L. 1991.

75-10-926. Hearing examiner — restrictions — duties. (1) The board shall appoint a hearing examiner to conduct certification proceedings under 75-10-901 through 75-10-945. The hearing examiner may not be a member of the board or an employee of the department or the board. A hearing examiner must be appointed within 20 days after the department's report has been filed with the board.

(2) A prehearing conference must be held, following notice, within 60 days after the department's report has been filed with the board.

(3) The prehearing conference must be organized and supervised by the hearing examiner.

(4) The prehearing conference must be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties all direct testimony that they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on must be submitted and served at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery that must be completed before the commencement of the hearing upon good cause shown and under other conditions as the hearing examiner prescribes.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing will proceed, setting forth those criteria listed in 75-10-929 as to which no issue

of fact or law has been raised and that are conclusively presumed and are not subject to further proof except for good cause shown, and listing any other special rules to expedite the hearing that the hearing examiner adopts with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this section shall ensure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed.

History: En. Sec. 21, Ch. 468, L. 1991.

75-10-927. Parties to certification proceeding — waiver — statement of intent to participate. (1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board under 75-10-901 through 75-10-945 may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency entitled to receive service of a copy of the application under 75-10-918;

(c) a person entitled to receive service of a copy of the application under 75-10-918;

(d) a nonprofit organization formed in whole or in part to:

(i) promote conservation or natural beauty;

(ii) protect the environment, personal health, or other biological values;

(iii) preserve historical sites;

(iv) promote consumer interests;

(v) represent commercial and industrial groups; or

(vi) promote the orderly development of the areas in which the facility is to be located; and

(e) any other interested person who establishes an interest in the proceeding.

(2) The department must be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in subsections (1)(b) through (1)(e).

(4) A party waives the right to be a party if the party does not participate in the hearing before the board.

(5) Each unit of local government entitled to receive service of a copy of the application under 75-10-918 shall file with the board a statement showing whether the unit of local government intends to participate in the certification

proceeding. If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent must be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.

History: En. Sec. 22, Ch. 468, L. 1991.

75-10-928. Record of hearing — procedure — rules of evidence — burden of proof. (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, that any party wishes the board to consider or that the board itself expects to use or rely upon must be made a part of the record.

(2) A record must be made of the hearing and of all testimony taken.

(3) In a certification proceeding held under 75-10-924, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-10-929 are met.

(4) All proceedings under 75-10-924 through 75-10-928 are governed by the procedures set forth in 75-10-924 through 75-10-928, the procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties to the hearing. No other rules of procedure or evidence apply except that the contested case procedures of the Montana Administrative Procedure Act apply if not in conflict with the procedures set forth in 75-10-924 through 75-10-928 or the procedural rules adopted by the board.

History: En. Sec. 23, Ch. 468, L. 1991.

Cross-References

Hearing — rules of evidence, cross-examination, judicial notice, 2-4-612.

Evidence, Title 26.

75-10-929. Decision of board — findings necessary for certification. (1) Within 90 days after submission of the recommended decision by the department, the board shall make complete findings, issue an opinion, and render a final decision upon the record, either granting or denying the application for a certificate as filed or granting it upon terms, conditions, or modifications of the siting of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it finds and determines:

(a) the nature of the probable environmental impact;

(b) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(c) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(d) that the facility will serve the public interest;

(e) any impacts of the facility according to each of the criteria listed in 75-10-920;

(f) the solid waste disposal needs listed in 75-10-920(4); and

(g) that the applicant has fully mitigated the loss of wildlife habitat, through either onsite or offsite habitat improvements.

(3) In determining that the facility will serve the public interest, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety; and

(e) any other factors that it considers relevant.

History: En. Sec. 24, Ch. 468, L. 1991.

75-10-930. Conditions imposed. If the board determines that the location of all or a part of the proposed megalandfill should be modified, it may condition its certificate upon the modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

History: En. Sec. 25, Ch. 468, L. 1991.

75-10-931 and 75-10-932 reserved.

75-10-933. License required. (1) A person may not commence to construct a megalandfill in the state without first applying for and obtaining a license pursuant to 75-10-221. The licensing process must be concurrent with the certification process required in 75-10-916 through 75-10-930.

(2) The department shall make the decision to grant or deny the license within 30 days of the certification decision, as provided in 75-10-929.

(3) Once a license has been issued, a megalandfill may not be constructed, operated, or maintained except in conformity with the license and any terms, conditions, and modifications contained in the license.

History: En. Sec. 26, Ch. 468, L. 1991.

75-10-934. License transferable. A license may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions, and modifications contained in 75-10-901 through 75-10-945.

History: En. Sec. 27, Ch. 468, L. 1991.

75-10-935. Opinion issued with decision — contents. (1) In rendering a decision on an application for a license for a megalandfill, the department shall issue an opinion stating its reasons for the action taken.

(2) In addition to the requirements of 75-10-221, any license issued by the department shall include the following:

(a) an environmental evaluation statement related to the megalandfill being certified. The statement must include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects that cannot be avoided by issuance of the license;

(iii) problems and objections raised by other federal and state agencies and interested groups; and

(iv) alternatives to the proposed facility.

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified megalandfill site between the time of certification and completion of construction; and

(d) a statement signed by the applicant showing agreement to comply with the requirements of 75-10-901 through 75-10-945 and the conditions of the certificate.

History: En. Sec. 28, Ch. 468, L. 1991.

75-10-936 and 75-10-937 reserved.

75-10-938. Monitoring. The department shall monitor the operations of all certificated facilities to ensure continuing compliance with 75-10-901 through 75-10-945 and with certificates issued under 75-10-916 and to discover and prevent noncompliance with 75-10-901 through 75-10-945 or certificates issued under 75-10-916.

History: En. Sec. 29, Ch. 468, L. 1991.

75-10-939. Revocation or suspension of license. A license may be revoked or suspended by the department following notice and an opportunity for a hearing before the department for:

(1) any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the department's refusal to grant a license;

(2) failure to comply with the terms or conditions of the certificate; or

(3) violation of any provision of 75-10-901 through 75-10-945, rules adopted under 75-10-901 through 75-10-945, or orders of the department.

History: En. Sec. 30, Ch. 468, L. 1991.

75-10-940. Enforcement by residents. (1) A person with knowledge that a requirement of 75-10-901 through 75-10-945 or a rule adopted under 75-10-901 through 75-10-945 is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that states the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the statements subjects the person to the penalties prescribed for a violation of 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the person may bring an action of mandamus in the district court of the first judicial district of Montana. If the court finds that a requirement of 75-10-901 through 75-10-945 or a rule adopted under 75-10-901 through 75-10-945 is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform those duties. If he fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

History: En. Sec. 31, Ch. 468, L. 1991.

75-10-941. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedy provided in this section does not exclude the use of any other remedy that may be available under the laws of the state.

History: En. Sec. 32, Ch. 468, L. 1991.

75-10-942. Judicial review of department and board of health decisions. (1) An applicant aggrieved by the final decision of the board on an application for a certificate or the final decision of the department on an application for a license may obtain judicial review of that decision by filing a petition in district court.

(2) The judicial review procedure is the same as that for contested cases under Title 2, chapter 4, part 7.

(3) This section does not prohibit the department from holding a hearing on all matters that are not the subject of a pending appeal by the applicant under subsection (1).

History: En. Sec. 33, Ch. 468, L. 1991.

75-10-943. Penalties for violation — civil action by attorney general. (1) (a) A person who commences to construct or operate a megalandfill without obtaining a certificate required under 75-10-916 and a license required under 75-10-933, who constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of 75-10-901 through 75-10-945 or any rule or order adopted under 75-10-901 through 75-10-945, or who knowingly submits false information in any report, long-range plan, or application required by 75-10-901 through 75-10-945 is liable for a civil penalty as provided in subsection (2).

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) A person who knowingly violates the provisions of subsection (1) shall be fined not more than $25,000 for each violation or be imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of 75-10-901 through 75-10-945, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce 75-10-901 through 75-10-945 or a certificate issued under 75-10-916. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order must be granted without bond.

(4) The department shall also enforce 75-10-901 through 75-10-945 and may bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected must be deposited in the solid waste management account for the use of the department in administering 75-10-901 through 75-10-945.

History: En. Sec. 34, Ch. 468, L. 1991.

75-10-944. Order not stayed by appeal — stay or suspension by court — limitations. An appeal from a department order does not automatically stay or suspend the operation of the order. The court may, upon motion by a party, stay or suspend, in whole or in part, the operation of the department's order on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) A stay may not be granted without notice to the parties and an opportunity to be heard by the court.

(2) A department order may not be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and a stay or suspension must specify the nature of the damage.

History: En. Sec. 35, Ch. 468, L. 1991.

75-10-945. Surety bond. If an order of the department is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the department. The cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, the party does not forfeit bond and is not responsible for damages caused by delay.

History: En. Sec. 36, Ch. 468, L. 1991.

75-10-946 through 75-10-949 reserved.

75-10-950. Definitions. As used in 75-10-950 through 75-10-954, the following definitions apply:

(1) "Applicant" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity that applies for a license to operate a megalandfill pursuant to 75-10-221.

(2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) (a) "Megalandfill" means, except as provided in subsection (4)(b), any new or existing solid waste management system licensed under 75-10-221 that accepts more than 200,000 tons of solid waste a year or an ash monofill that accepts more than 35,000 tons of ash a year.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(5) "Natural resource" means ground water, surface water, soil, wildlife, and other physical and biological resources as determined by the department by rule.

History: En. Sec. 1, Ch. 541, L. 1991; amd. Sec. 3, Ch. 338, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 338 near beginning of definition of megalandfill inserted exception clause and inserted (b) to provide that certain existing landfills are not considered megalandfills until they accept more than 300,000 tons of solid waste a year.

75-10-951. Megalandfill financial assurance — release. (1) As a condition of a license to operate a megalandfill under 75-10-221, an applicant shall provide financial assurance sufficient to ensure the restoration or replacement of any natural resource damaged or impaired as a result of the construction, operation, or closure of the megalandfill. The department shall determine the amount of financial assurance that must be provided based on an assessment of the license application and the applicant's estimated cost of reclaiming, restoring, or replacing natural resources that may be damaged or impaired by the applicant's proposed operations.

(2) The department shall adopt rules to specify the terms and conditions of financial assurance.

(3) To satisfy the financial assurance requirement, the applicant shall file with the department a bond that is payable to the state of Montana with a surety satisfactory to the department, conditioned upon the faithful performance of the requirements of this section and the rules of the department.

(4) The bond approved by the department may not be less than the estimated cost to the state to reclaim, restore, or replace damaged or impaired natural resources.

(5) Every 2 years the department shall evaluate the amount of the bond provided for a licensed megalandfill. If the department determines that the amount of the bond does not represent the present cost of reclaiming, restoring, or replacing natural resources that may be damaged or impaired by the operation, the department may modify the terms and conditions of the bond.

(6) The department may not release an operator from the financial assurance requirement and may not release the bond:

(a) for a minimum of 30 years after the megalandfill has closed;

(b) until the department determines that the natural resources associated with the megalandfill have been permanently reclaimed, restored, or replaced to the quantity and quality that prevailed prior to the commencement of the licensed operations and that the megalandfill presents no significant future threat to those natural resources; and

(c) until a public hearing has been held. The department shall make all information that is relevant to the decision on whether to release an operator from the financial assurance requirement readily available to interested persons, and no less than 45 days prior to the public hearing the department shall:

(i) publish notice of the hearing in newspapers of general statewide circulation and circulation in the county where the megalandfill is located; and

(ii) take other appropriate measures to ensure broad distribution of the hearing notice.

(7) A person may submit to the department information relevant to the department's decision to release an operator from all or any part of the financial assurance requirement for a period of 30 days after the date of the public hearing required under subsection (6).

(8) A person may request the department to reconsider its decision to release an operator from all or any part of the financial assurance requirement based upon information the person submits to show that the licensee has not reclaimed, restored, or replaced the quantity or quality of natural resources that prevailed prior to the commencement of the licensed operations. The department's response to a request to reconsider its decision to release an operator from all or any part of the financial assurance requirement is the final agency decision.

History: En. Sec. 2, Ch. 541, L. 1991.

75-10-952. Bond forfeiture. At the board's discretion, the failure of a licensee to reclaim, restore, or replace damaged or impaired natural resources to the department's satisfaction, as required under 75-10-951(6) or any rule adopted under 75-10-951(6), may result in bond forfeiture.

History: En. Sec. 3, Ch. 541, L. 1991.

75-10-953. Reclamation by board. (1) Pursuant to the provisions of 75-10-950 through 75-10-954, the board may reclaim, restore, or replace any affected natural resources for which a bond has been forfeited.

(2) The board may have reclamation work done by department employees or by employees of other governmental agencies or soil conservation districts or through contracts with qualified persons.

(3) Any funds or any public works programs available to the board may be used and expended to reclaim, restore, or replace natural resources that have been damaged or impaired as a result of the construction, operation, or closure of a megalandfill. The board shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(4) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether a megalandfill has been reclaimed and rehabilitated in accordance with the requirements of 75-10-951(6). Upon request of the board, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

History: En. Sec. 4, Ch. 541, L. 1991.

75-10-954. Megalandfill reclamation account. (1) There is a megalandfill reclamation account in the state special revenue fund provided for in 17-2-102.

(2) All fees, fines, penalties, forfeited bonds, and other money that have been or will be paid to the department under the provisions of 75-10-950 through 75-10-954 must be deposited in the account.

(3) Money in the account is available to the department for the reclamation, restoration, and replacement of natural resources damaged or impaired by the megalandfill. Unencumbered and unexpended money remaining in the account at the end of a fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action.

History: En. Sec. 5, Ch. 541, L. 1991.

Part 10

Infectious Waste Management Act

Part Cross-References

Report of unprotected exposure to disease, 50-16-702.

75-10-1001. Short title. This part may be cited as the "Infectious Waste Management Act".

History: En. Sec. 1, Ch. 483, L. 1991.

75-10-1002. Purpose. The purpose of this part is to protect the public health, safety, and welfare of the citizens of Montana by developing and implementing infectious waste management policies that are reasonable, cost-effective, aesthetically pleasing, and environmentally acceptable.

History: En. Sec. 2, Ch. 483, L. 1991.

75-10-1003. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences established in 2-15-2101.

(2) "Generator" means an individual, firm, facility, or company that produces infectious waste.

(3) "Infectious" means capable of producing disease. To be infectious, the following four factors simultaneously must be present:

(a) virulence, which is the ability of microorganisms to cause disease;

(b) dose, which is microorganisms in a quantity sufficient to cause infection;

(c) portal of entry, which is an opening or route of access into a human body; and

(d) host susceptibility, which means the host's natural resistance is incapable of preventing infection.

(4) "Infectious waste" means waste capable of producing infectious disease. Infectious waste includes but is not limited to:

(a) cultures and stocks of infectious agents and associated biologicals;

(b) human pathological waste, including tissues, organs, and body parts removed during surgery or an autopsy;

(c) free-flowing waste human blood and products of blood, including serum, plasma, and other blood components and items soaked or saturated with blood; and

(d) sharps that have been used in patient care, medical research, or industrial laboratories.

(5) "Sharps" means any discarded health care article that may cause punctures or cuts, including but not limited to needles, scalpel blades, and broken glass that may be contaminated with blood.

(6) "Steam sterilization" means a treatment method for infectious waste utilizing saturated steam within a pressure vessel (known as a steam sterilizer, autoclave, or retort) at a time, for a period of time, and at a temperature sufficient to kill infectious agents within the waste.

(7) "Storage" means the actual or intended containment of wastes on either a temporary basis or a long-term basis.

(8) "Transportation" means the movement of infectious waste from the point of generation to any intermediate points or to the point of ultimate treatment or disposal.

(9) "Treatment" means the application of a method, technique, or process, including incineration, designed to render infectious waste sterile.

History: En. Sec. 3, Ch. 483, L. 1991.

75-10-1004. Prohibition. A person may not treat, store, transport, or dispose of infectious waste in a manner not authorized under the provisions of this part or rules adopted under the provisions of this part.

History: En. Sec. 4, Ch. 483, L. 1991.

75-10-1005. Management standards — procedures for storage, transportation, treatment, and disposal. (1) Infectious waste must be separated from ordinary waste at the point of origin and stored until the waste is rendered noninfectious in separate, distinct containers with biohazard warning labels in compliance with the following procedures:

(a) Sharps must be contained for storage, transportation, treatment, and subsequent disposal in leakproof, rigid, puncture-resistant containers that must be taped closed or capped securely to prevent loss of contents.

(b) Infectious waste other than sharps must be contained in moisture-proof disposable containers or bags of a strength sufficient to prevent ripping, tearing, or bursting under normal conditions of use. The bags must be securely tied to prevent leakage or expulsion of solid or liquid wastes during storage, handling, and transportation.

(2) To inhibit the spread of infectious agents, infectious waste must be stored prior to treatment in a secured area that prevents access by unauthorized personnel and must be clearly marked or labeled as infectious.

(3) Handling of infectious waste must be done in a manner to prevent compaction or other mechanical manipulation that might cause the release of infectious agents.

(4) (a) Treatment and disposal of infectious waste must be accomplished through the following methods:

(i) incineration with complete combustion that reduces infectious waste to carbonized or mineralized ash;

(ii) steam sterilization that renders infectious waste noninfectious; or

(iii) sterilization by standard chemical techniques or by any scientifically proven techniques approved by state and federal authorities.

(b) Liquid or semisolid infectious waste may be discharged into a sewer system that provides secondary treatment or into a primary treatment sewage system if waste is first sterilized by chemical treatment. A subsurface disposal system installed and operated in accordance with state or local sanitary regulations is, for the purpose of this subsection (b), a sewer system providing secondary treatment.

(c) Fetal remains or recognizable body parts other than teeth must be disposed of by incineration or interment.

(5) If infectious waste has been rendered noninfectious by one of the methods listed in subsection (4) and is no longer biologically hazardous, it may be mixed with and disposed of with ordinary waste in the following manner:

(a) Steam-sterilized waste must be labeled identifying it as such with heat sensitive tape or bagged in marked autoclavable bags.

(b) Chemically treated waste or waste otherwise treated under subsection (4)(a)(iii) must be appropriately labeled.

(6) Infectious waste may be transported by the generator, a municipal solid waste service, or a regulated commercial hauler to an offsite treatment facility if the waste is confined in a leakproof, noncompacting, fully enclosed vehicle compartment.

(7) (a) Infectious waste that has been treated by one of the methods in subsection (4) may be disposed of in a properly operated landfill licensed under 75-10-221.

(b) Untreated infectious waste may be disposed of at a licensed, properly operated landfill until April 1, 1993, if it is buried in a separate area without compaction and with minimum disturbance.

(8) An employee who handles or manages infectious waste must receive training provided by the employer that is adequate to ensure safe performance of duties.

(9) Generators and transporters of infectious waste shall develop a contingency plan to handle spills and equipment failure.

History: En. Sec. 5, Ch. 483, L. 1991.

75-10-1006. Licensing and regulation — rulemaking authority. (1) A board or department of the state that licenses a profession, occupation, or health care facility that generates infectious waste shall require each licensee to comply with this part as a condition of licensure. The board or department shall adopt rules to implement this part and may impose and adjust annual fees commensurate with the costs of regulation.

(2) A profession, occupation, or health care facility that generates or transports infectious waste or that operates treatment, storage, or disposal facilities regulated by this part that is not already licensed by a board or department under subsection (1) must obtain a permit annually from the department. The department shall adopt rules to implement this part and may establish an annual fee commensurate with the costs of regulation. Fees collected under the provisions of this part must be deposited in the solid waste management account established in 75-10-117.

History: En. Sec. 6, Ch. 483, L. 1991.

Part 11

Notice of Motor Oil Recycling Center

75-10-1101. Waste oil notice. (1) Each retailer and wholesaler offering motor oil for sale must visibly display at an appropriate location within the retail store or wholesale outlet a sign indicating the location of the nearest waste oil recycling collection center if the center is within 25 miles of the retailer or wholesaler.

(2) The department of health and environmental sciences shall design an oil recycling sign to be used by retailers and wholesalers. The department may establish the specifications for the sign by rule.

History: En. Sec. 1, Ch. 623, L. 1991.

CHAPTER 11

UNDERGROUND STORAGE TANKS

Part 1 reserved

Part 2 — Licensing of Underground Storage Tank Installers

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75-11-319. Rulemaking authority — department and department of transportation.
75-11-320. Other authorities unaffected.
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Part 1 reserved

Part 2
Licensing of Underground Storage Tank Installers

Part Cross-References

Hazardous waste management, Title 75, ch. 10, part 4.

75-11-201. Short title. This part may be cited as the "Montana Underground Storage Tank Installer Licensing and Permitting Act".

History: En. Sec. 1, Ch. 594, L. 1989.

75-11-202. Findings and purpose. (1) Leaking underground storage tank systems have been identified as a significant source of underground contamination and as a potential hazard for fire and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation or closure requires specialized knowledge, training, and experience.

(2) To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage tank systems; to limit the conduct of these activities to persons with demonstrated competence, training, and experience; and to assess fees to support state and local administration of permitting, licensing, and inspection activities.

History: En. Sec. 2, Ch. 594, L. 1989; amd. Sec. 1, Ch. 200, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 200 in (1) and (2) substituted "tank systems" for "tanks". Amendment effective March 26, 1993.

Applicability: Section 13, Ch. 200, L. 1993, provided: "[This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993."

75-11-203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) (a) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(5) "Installer" means an individual who installs or closes underground storage tank systems.

(6) "License" means a license issued by the department under 75-11-210 to conduct the installation or closure of underground storage tank systems and the installation of leak detection devices or cathodic protection systems.

(7) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

(8) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.

(9) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.

(10) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

(11) "Regulated substance" means a regulated substance as defined in 75-10-403.

(12) "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in 75-10-403, and, for purposes of this part, includes a leak detection device that is external to and not attached to an underground storage tank system.

History: **En. Sec. 3, Ch. 594, L. 1989; amd. Sec. 2, Ch. 200, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 200 throughout section substituted "tank system" or "tank systems" for "tank" or "tanks"; in definition of installation inserted last sentence regarding leak detection devices and deleted from the definition former (4)(b)(ii) and (4)(b)(iii) that read: "(ii) the installation of a leak detection device that is external to and not attached to the underground storage tank; or (iii) the installation and maintenance of a cathodic protection system"; in definition of installer substituted "installs or closes" for "is engaged in the business of installation or closure of"; in definition of license inserted last phrase regarding leak detection devices and cathodic systems; in definition of underground storage tank inserted "or "underground storage tank system"" and last phrase referring to external leak detection devices; and made minor changes in style. Amendment effective March 26, 1993.

Applicability: Section 13, Ch. 200, L. 1993, provided: "[This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993."

75-11-204. Rulemaking authority. The department may adopt rules governing the installation and closure of underground storage tank systems. Rules may include but are not limited to the following:

(1) the requirements for issuance, denial, renewal, modification, suspension, and revocation of permits for the installation and closure of underground storage tank systems;

(2) the requirements for issuance, denial, renewal, modification, suspension, and revocation of licenses for underground storage tank system installers;

(3) the requirements for examination and training of underground storage tank system installers;

(4) the requirements for qualifications of inspectors, use of inspectors, and methods for conducting an inspection;

(5) a schedule of fees for obtaining licenses and license renewals by underground storage tank system installers;

(6) a schedule of fees for the review of applications for underground storage tank system permits;

(7) a schedule of fees for inspection of installations or closures; and

(8) the mechanism for remittance of inspection or permitting fees to local governments.

History: En. Sec. 4, Ch. 594, L. 1989; amd. Sec. 3, Ch. 200, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 200 throughout section substituted "tank system" or "tank systems" for "tank" or "tanks". Amendment effective March 26, 1993.

Applicability: Section 13, Ch. 200, L. 1993, provided: "[This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993."

75-11-205 through 75-11-208 reserved.

75-11-209. *(Temporary)* **Permits — requirement for licensed installer.** (1) Except as provided in 75-11-231, a person may not install or close, or cause to be installed or closed, an underground storage tank system without a permit issued by the department as provided in 75-11-212.

(2) In addition to obtaining a permit, an owner or operator shall obtain the services of a licensed installer for the installation or closure of an underground storage tank system unless the installation or closure is:

(a) inspected by a department inspector or a designated local inspector as provided in 75-11-213; or

(b) exempt from the requirement for a licensed installer, as provided in 75-11-217. *(Terminates January 1, 1994—sec. 6, Ch. 641, L. 1993.)*

75-11-209. *(Effective January 1, 1994)* **Permits — requirement for licensed installer.** (1) A person may not install or close, or cause to be installed or closed, an underground storage tank system without a permit issued by the department as provided in 75-11-212.

(2) In addition to obtaining a permit, an owner or operator shall obtain the services of a licensed installer for the installation or closure of an underground storage tank system unless the installation or closure is:

(a) inspected by a department inspector or a designated local inspector as provided in 75-11-213; or

(b) exempt from the requirement for a licensed installer, as provided in 75-11-217.

History: En. Sec. 5, Ch. 594, L. 1989; amd. Sec. 4, Ch. 200, L. 1993; amd. Sec. 2, Ch. 641, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 200 in (1) and (2) substituted "tank system" for "tank"; and in (1), at beginning, substituted "A person" for "An owner or operator of an underground storage tank". Amendment effective March 26, 1993.

Chapter 641 in (1), at beginning, inserted exception clause. Amendment effective May 20, 1993, and terminates January 1, 1994.

Applicability: Section 13, Ch. 200, L. 1993, provided: "[This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993."

75-11-210. Licensing — interim licenses — regular licenses. (1) An installer may not install or close an underground storage tank system unless that person has a valid license issued by the department.

(2) The department shall grant an installer a regular license if the installer demonstrates competency and experience in the installation and closure of underground storage tank systems, passes a written examination conducted by the department, and pays the license fee established by department rule.

(3) The department shall conduct written examinations for the purpose of qualifying individuals to receive an underground storage tank system installer license. The department shall determine the times and locations of the examinations and shall provide public notice of the examinations.

(4) An underground storage tank system installer license is valid for a period not to exceed 3 years and is subject to periodic renewal as prescribed by department rule.

(5) As a condition of renewal, the department may require that an installer demonstrate continuing competency in the installation and closure of tank systems.

(6) An installer need not be a Montana resident to qualify for a license.

History: En. Sec. 6, Ch. 594, L. 1989; amd. Sec. 5, Ch. 200, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 200 throughout section substituted "tank system" or "tank systems" for "tank" or "tanks"; deleted former (2) requiring the Department to grant interim licenses to tank installers from April 1, 1990, through September 30, 1990, upon a demonstration of competency and providing for the expiration of those interim licenses on October 1, 1990; in (2), after "regular license", deleted "beginning October 1, 1990"; and made minor changes in style. Amendment effective March 26, 1993.

Applicability: Section 13, Ch. 200, L. 1993, provided: "[This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993."

75-11-211. Denial, modification, suspension, or revocation of license — grounds. (1) The department may deny, modify, condition, suspend, or revoke a license if the installer:

(a) fails to achieve a passing grade on a written examination;

(b) fails to pay a license fee;

(c) commits fraud or deceit with respect to the license application;

(d) has had a similar license suspended or revoked in another state or territory; or

(e) violates any state or federal law, rule, permit, or order relating to the installation or closure of an underground storage tank system.

(2) If the department modifies, conditions, suspends, or revokes a license, it shall inform the applicant or license holder in writing of the reason for the action. The installer may request a hearing before the board. If the board grants a hearing, the hearing must be held in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 7, Ch. 594, L. 1989; amd. Sec. 6, Ch. 200, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 200 in (1)(e) substituted "tank system" for "tank". Amendment effective March 26, 1993.

Applicability: Section 13, Ch. 200, L. 1993, provided: "[This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that

require either a permit or a license beginning
on October 1, 1993."

75-11-212. *(Temporary)* **Permits — application procedure — issuance.** (1) Except as provided in 75-11-231, before the installation or closure of an underground storage tank system, the owner or operator or the owner's or operator's designated licensed underground storage tank installer or remover shall file a permit application with the department on forms provided by the department. The time between the filing of a permit application with the department and the installation or closure may be provided by department rule. The department may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tanks.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

(a) the date of the underground storage tank system installation or closure;

(b) the location of the underground storage tank system installation or closure;

(c) the type of construction of the underground storage tank system;

(d) the contents of the underground storage tank system being closed or the anticipated contents of the tank being installed; and

(e) the name of the licensed installer who will be installing or closing the underground storage tank system or, if the owner or operator is not going to have the underground storage tank system installed or closed by a licensed installer, the estimated date for inspection by the department.

(3) After receipt of a completed application that meets the requirements of this section and any rules adopted under 75-11-204(1), the department shall issue the permit. *(Terminates January 1, 1994—sec. 6, Ch. 641, L. 1993.)*

75-11-212. *(Effective January 1, 1994)* **Permits — application procedure — issuance.** (1) Before the installation or closure of an underground storage tank system, the owner or operator or the owner's or operator's designated licensed underground storage tank installer or remover shall file a permit application with the department on forms provided by the department. The time between the filing of a permit application with the department and the installation or closure may be provided by department rule. The department may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tanks.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

(a) the date of the underground storage tank system installation or closure;

(b) the location of the underground storage tank system installation or closure;

(c) the type of construction of the underground storage tank system;

(d) the contents of the underground storage tank system being closed or the anticipated contents of the tank being installed; and

(e) the name of the licensed installer who will be installing or closing the underground storage tank system or, if the owner or operator is not going to have the underground storage tank system installed or closed by a licensed installer, the estimated date for inspection by the department.

(3) After receipt of a completed application that meets the requirements of this section and any rules adopted under 75-11-204(1), the department shall issue the permit.

History: En. Sec. 8, Ch. 594, L. 1989; amd. Sec. 7, Ch. 200, L. 1993; amd. Sec. 3, Ch. 641, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 200 in (1) and (2)(e), in two places, substituted "tank system" for "tank"; in (1), in first sentence, inserted reference to the designated tank installer or remover; and in (2)(a), (2)(b), (2)(c), and (2)(d) substituted "underground storage tank system" for "tank". Amendment effective March 26, 1993.

Chapter 641 in (1), at beginning, inserted exception clause. Amendment effective May 20, 1993, and terminates January 1, 1994.

Applicability: Section 13, Ch. 200, L. 1993, provided: "[This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993."

75-11-213. Inspection of installations and closures — fee. (1) After being issued a permit, an owner or operator may obtain an inspection by the department in lieu of obtaining the services of a licensed installer. The owner or operator shall provide timely notice to the department of the date and location of the underground storage tank system installation or closure and shall establish with the department the time when an inspection may be conducted.

(2) An owner or operator may conduct an installation or closure under this section only if an inspector is present.

(3) An inspection fee must be paid by the owner or operator to the department to cover the costs associated with an inspection. The inspection is not considered complete until the owner or operator pays the fee.

(4) Department officials or local government officers, such as local health officers, sanitarians, local fire chiefs, or other persons designated or hired by the department, shall conduct inspections on behalf of the department.

(5) The department shall pay the person conducting an inspection on the department's behalf, as provided in subsection (4), from the underground storage tank system license and permit account established in 75-11-227 up to 80% of any fee collected by the department for the inspection. When an inspection is conducted by an officer of a county or city, the payment must be made by the department to the appropriate county or city treasurer. A county or city shall use payments received under this section only for costs incurred in conducting inspections under this section.

(6) A copy of an installation inspection report must be kept on file by the owner or operator for as long as the department may require by rule. A copy of a closure inspection report must be kept by the owner or operator for 3 years after the date of closure.

(7) The department may enter and inspect the premises or any appurtenant property of an owner or operator at any time to ensure compliance with laws or rules pertaining to underground storage tank systems.

History: En. Sec. 9, Ch. 594, L. 1989; amd. Sec. 8, Ch. 200, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 200 in (1), (5), and (7) substituted "tank system" or "tank systems" for "tank" or "tanks". Amendment effective March 26, 1993.

Applicability: Section 13, Ch. 200, L. 1993, provided: "[This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993."

75-11-214 through 75-11-216 reserved.

75-11-217. Exemption. The owner or operator of a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes or a tank used for storing heating oil for consumptive use on the premises where stored shall obtain a permit for the installation or closure of the tank system but is not required to obtain the services of a licensed installer.

History: En. Sec. 10, Ch. 594, L. 1989; amd. Sec. 9, Ch. 200, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 200 near end substituted "tank system" for "tank". Amendment effective March 26, 1993.

Applicability: Section 13, Ch. 200, L. 1993, provided: "[This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993."

75-11-218. Administrative enforcement. (1) When the department believes that a person has violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the violation on the person or the person's agent. The notice must specify the alleged violation and the facts that constitute the alleged violation. The notice may include an order to provide information pertaining to the installation or closure or an order to take necessary corrective action within a reasonable time as stated in the order. The notice and order may be signed and served by a department inspector if it is personally given to the person or to the person's agent. Every other notice and order must be signed by the director of the department or the director's deputy and must be served by certified mail upon the person or the person's agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, pursuant to a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges described in the notice of violation; or

(b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

(4) This section does not prevent the board or department from attempting to obtain voluntary compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial means.

History: En. Sec. 11, Ch. 594, L. 1989; amd. Sec. 10, Ch. 200, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 200 in (3), at beginning, inserted "In addition to or"; and made minor changes in style. Amendment effective March 26, 1993.

Applicability: Section 13, Ch. 200, L. 1993, provided: "[This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993."

75-11-219. Injunctions. The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain any person from engaging in unauthorized activity that is endangering public health or causing damage to the environment;

(2) enjoin a violation of this part, a rule adopted under this part, or an order of the department or the board; or

(3) require compliance with this part, a rule adopted under this part, or an order of the department or the board.

History: En. Sec. 12, Ch. 594, L. 1989.

75-11-220. Imminent hazard. Upon receipt of evidence that the installation or closure of an underground storage tank system may present an imminent and substantial danger to public health or the environment, the department may commence administrative or judicial proceedings to immediately abate the danger or to restrain, order, or enjoin any person from causing the danger. The department may take other judicial or administrative action as may be necessary.

History: En. Sec. 13, Ch. 594, L. 1989; amd. Sec. 11, Ch. 200, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 200 near middle of first sentence substituted "tank system" for "tank". Amendment effective March 26, 1993.

Applicability: Section 13, Ch. 200, L. 1993, provided: "[This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993."

75-11-221 and 75-11-222 reserved.

75-11-223. Civil penalties. (1) Any person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed $10,000 per violation. If an installer who is an employee is in violation, the employer of that installer is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under 75-11-224.

History: En. Sec. 14, Ch. 594, L. 1989; amd. Sec. 1, Ch. 433, L. 1991.

75-11-224. Criminal penalties. (1) Any owner or operator who knowingly installs or closes an underground storage tank system without a permit and either an inspection or the use of the services of a licensed installer as required in 75-11-209; any installer who knowingly installs or closes an underground storage tank system without being licensed; or any person who knowingly makes any false statements or representations in any application, permit, report, licensing form, or other document filed or maintained as required by this part or required by rules adopted under this part is subject to a fine not to exceed $10,000 for each violation or imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy.

History: En. Sec. 15, Ch. 594, L. 1989; amd. Sec. 12, Ch. 200, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 200 in (1), in two places, substituted "tank system" for "tank". Amendment effective March 26, 1993.

Applicability: Section 13, Ch. 200, L. 1993, provided: "[This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993."

75-11-225. Compliance with other laws — limitation on local ordinances. (1) Nothing in this part limits or alters the responsibility of an owner, operator, or installer to comply with all other state laws or rules.

(2) Ordinances adopted by local government units requiring installation or closure permits or licensed installers, or both, may be no less stringent than the requirements of this part.

History: En. Sec. 16, Ch. 594, L. 1989.

75-11-226. Application of other law. (1) The provisions of this part and rules adopted under this part govern if they conflict with other provisions of Montana law or any action taken by the department under the other provisions of law.

(2) The remedies provided for in this part are cumulative with other remedies provided by law.

History: En. Sec. 17, Ch. 594, L. 1989.

75-11-227. Underground storage tank license and permit account. (1) There is an underground storage tank license and permit account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the account:

(a) revenues from permit, license, and inspection fees collected under this part; and

(b) revenues from penalties or damages collected under this part.

(3) Appropriations may be made from the underground storage tank license and permit account only for the administration of the underground storage tank program.

History: **En. Sec. 18, Ch. 594, L. 1989.**

75-11-228 through 75-11-230 reserved.

75-11-231. *(Temporary)* **Exemptions — tank closure.** (1) For the purposes of this section, a tank is a farm or residential underground storage tank with a capacity of 1,100 gallons or less that is used either for storing motor fuel for noncommercial purposes or for storing heating oil for consumptive use on the premises where stored.

(2) An owner or operator may close a tank without a license required under 75-11-212 or without the services of a licensed installer, provided that:

(a) on or before the date of the next tank registration period, the owner or operator notifies the department of the date of the tank's removal;

(b) when closing a tank, if the owner or operator discovers or suspects that there has been a leak, the owner or operator notifies the department immediately and performs initial response and abatement procedures; and

(c) the county health department is notified, at least 48 hours in advance, that the owner or operator intends to close a tank. *(Terminates January 1, 1994—sec. 6, Ch. 641, L. 1993.)*

History: **En. Sec. 1, Ch. 641, L. 1993.**

Compiler's Comments

Effective Date — Termination: Sections 5 and 6, Ch. 641, L. 1993, provided that this section is effective May 20, 1993, and terminates January 1, 1994.

Part 3

Petroleum Storage Tank Cleanup

Part Cross-References

Petroleum Tank Release Compensation Board, 2-15-2108.

Hazardous waste management, Title 75, ch. 10, part 4.

75-11-301. Findings and purposes. (1) The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

(2) The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

(3) The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

(4) The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in 75-11-314, is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue pursuant to the provisions of Article VIII, section 6, of the Montana constitution. The fee is intended to implement the legislature's duty to provide for the administration and enforcement of maintaining and improv-

ing a clean and healthful environment for present and future generations, as required by Article IX, section 1, of the Montana constitution.

(5) The purposes of this part are to:

(a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;

(b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks;

(c) assist certain tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks; and

(d) provide tank owners with incentives to improve petroleum storage tank facilities in order to minimize the likelihood of accidental releases.

History: En. Sec. 1, Ch. 528, L. 1989; amd. Sec. 1, Ch. 763, L. 1991; amd. Sec. 1, Ch. 339, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 339 inserted (5)(d) regarding incentives to improve tank facilities and minimize accidental releases. Amendment effective April 13, 1993.

Applicability: Section 6, Ch. 339, L. 1993, provided: "[This act] applies to releases discovered on or after October 1, 1993, from properly designed and installed double-walled petroleum storage tank systems."

75-11-302. Definitions. Except as provided in subsections (2), (14), and (24), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third party bodily injury or property damage.

(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(10) "Eligible costs" means expenses reimbursable under 75-11-307.

(11) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to the federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) "Owner" means a person who holds title to, controls, or possesses an interest in a petroleum storage tank. The term does not include a person who holds an interest in a tank solely for financial security, unless through

foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center.

History: En. Sec. 2, Ch. 528, L. 1989; amd. Sec. 1, Ch. 389, L. 1991; amd. Sec. 2, Ch. 763, L. 1991; amd. Sec. 1, Ch. 298, L. 1993; amd. Sec. 2, Ch. 339, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 298 at beginning inserted exception clause; inserted definitions of aviation gasoline, export, exporter, heating oil, import, and special fuel; substituted definition of distributor for former definition that read: ""Distributor" means a distributor as defined in 15-70-201"; in definition of petroleum storage tank, in (d), substituted "subsections (22)(b) and (22)(c)" for "subsections (16)(b) and (16)(c)" and in (d)(iii) substituted "subsections (22)(d)(i) and (22)(d)(ii)" for "subsections (16)(d)(i) and (16)(d)(ii)"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 339 inserted definition of double-walled tank system; in definition of petroleum storage tank, in (d), substituted "subsections (22)(b) and (22)(c)" for "subsections (16)(b) and (16)(c)" and in (d)(iii) substituted "subsections (22)(d)(i) and (22)(d)(ii)" for "subsections (16)(d)(i) and (16)(d)(ii)"; and made minor changes in style. Amendment effective April 13, 1993.

Effective Date — Applicability: Section 3, Ch. 298, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to all tax revenue recorded on or after July 1, 1993."

Applicability: Section 6, Ch. 339, L. 1993, provided: "[This act] applies to releases discovered on or after October 1, 1993, from properly designed and installed double-walled petroleum storage tank systems."

75-11-303 through 75-11-306 reserved.

75-11-307. Reimbursement for expenses caused by a release. (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs; and

(b) compensation paid to third parties for bodily injury or property damage.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4).

(3) An owner or operator may designate a person as an agent to receive the reimbursement, provided that the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (5):

(a) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993; and

(b) for all other releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board.

History: En. Sec. 3, Ch. 528, L. 1989; amd. Sec. 2, Ch. 389, L. 1991; amd. Sec. 3, Ch. 763, L. 1991; amd. Sec. 3, Ch. 339, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 339 inserted (4)(a) establishing reimbursement levels for heating oil or noncommercial motor fuel releases eligible under the petroleum tank release cleanup fund; in (4)(b)(i) and (4)(b)(ii) substituted language establishing reimbursement levels for other releases eligible under the petroleum tank release cleanup fund for former language that read: "except for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes; and

(b) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000, for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes"; and made minor changes in style. Amendment effective April 13, 1993.

Applicability: Section 6, Ch. 339, L. 1993, provided: "[This act] applies to releases discovered on or after October 1, 1993, from properly designed and installed double-walled petroleum storage tank systems."

75-11-308. Eligibility. (1) An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after April 13, 1989;

(b) the department is notified of the release in the manner and within the time provided by law or rule;

(c) the department has been notified of the existence of the tank in the manner required by department rule or has waived the requirement for notification;

(d) the release was an accidental release; and

(e) with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules when the release occurred and remained in compliance following detection of the release.

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

(a) a tank located at a refinery or a terminal of a refiner;

(b) a tank located at an oil and gas production facility;

(c) a tank that is or was previously under the ownership or control of a railroad;

(d) a tank belonging to the federal government;

(e) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

(f) a mobile storage tank used to transport petroleum or petroleum products from one location to another.

History: En. Sec. 4, Ch. 528, L. 1989; amd. Sec. 3, Ch. 389, L. 1991; amd. Sec. 4, Ch. 763, L. 1991; amd. Sec. 4, Ch. 339, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 339 near middle of (1), before "eligible costs", inserted "the applicable percentage as provided in 75-11-307(4)(a) and (4)(b)". Amendment effective April 13, 1993.

Applicability: Section 6, Ch. 339, L. 1993, provided: "[This act] applies to releases discovered on or after October 1, 1993, from properly designed and installed double-walled petroleum storage tank systems."

75-11-309. Procedures for reimbursement of eligible costs. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect public health and safety and the environment.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (where applicable), and federal corrective action requirements.

(c) (i) The department shall review the corrective action plan and forward a copy to a local government office and, where applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (c) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(d) The department shall notify the owner or operator and the board of its approval of a corrective action plan.

(e) The owner or operator shall implement the approved plan. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, parts 4 and 7, and other applicable law and rules.

(f) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board. The board shall forward each claim and appropriate documentation to the department. The department shall notify the board of any costs that the department considers not reimbursable because of any failure to meet the requirements of subsection (2). The department shall inform the owner or operator of any notification given to the board.

(g) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(h) In addition to the documentation in subsections (1)(f) and (1)(g), when the release is claimed to have originated from a double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date the release was discovered;

(ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

(iii) that the double-walled tank system was properly installed and made of materials and constructed in accordance with applicable department regulations.

(2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section.

(3) If an owner or operator disagrees with a board determination under subsection (2), the owner or operator may submit a written request for a hearing before the board. The hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(4) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(5) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated under subsection (4).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee.

History: En. Sec. 5, Ch. 528, L. 1989; amd. Sec. 4, Ch. 389, L. 1991; amd. Sec. 5, Ch. 339, L. 1993; amd. Sec. 1, Ch. 355, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 339 inserted (1)(h) regarding documentation when the release is claimed to have originated from a double-walled tank system; and made minor changes in style. Amendment effective April 13, 1993.

Chapter 355 in second sentence of (3), after "of the board", inserted "or as otherwise permitted under the Montana Administrative Procedure Act"; and made minor changes in style.

A style change in (1)(a) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Applicability: Section 6, Ch. 339, L. 1993, provided: "[This act] applies to releases discovered on or after October 1, 1993, from properly designed and installed double-walled petroleum storage tank systems."

75-11-310 through 75-11-312 reserved.

75-11-313. Petroleum tank release cleanup fund. (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections (3)(b) and (3)(c). Administrative costs under subsection (3)(a) must be paid pursuant to a legislative appropriation.

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature; and

(d) all interest earned on money in the fund.

(3) The fund may be used only:

(a) to administer this part, including payment of board and department expenses associated with administration;

(b) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and

(c) for repayment of any advance made under subsection (4), plus interest earned on the advance.

(4) (a) The legislature may appropriate to the fund repayable advances as necessary to carry out the purposes of this part. The outstanding total of repayable advances may not exceed the amount the board estimates will be received by the fund from the petroleum storage tank cleanup fee during the next 24 months.

(b) Advances to the fund must be repaid and interest earned on advances must be paid to the general fund when determined appropriate by the board. However, all advances to the fund plus the interest earned must be repaid on or before December 31, 1995.

History: En. Sec. 6, Ch. 528, L. 1989; amd. Sec. 1, Ch. 543, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 543 in second sentence of (1), after "17-7-502", inserted remainder of second sentence and third sentence that read: "for the purposes provided for under subsections (3)(b) and (3)(c). Administrative costs under subsection (3)(a) must be paid pursuant to a legislative appropriation." Amendment effective July 1, 1993.

75-11-314. Petroleum storage tank cleanup fee — collection — penalties — warrant for distraint — statute of limitations. (1) Except as provided in subsection (4), each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991;

(b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991;

(c) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;

(d) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and

(e) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.

(2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.

(3) Alcohol that is blended with gasoline to be sold as gasohol is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds $8 million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than $4 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds $8 million.

(5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-203, 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee.

History: En. Sec. 7, Ch. 528, L. 1989; amd. Sec. 2, Ch. 298, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 298 in (1), near middle of first sentence, inserted "aviation gasoline, special fuel, or heating oil"; inserted (1)(c) setting fee for aviation gasoline; inserted (1)(d) setting fee for special fuel; inserted (1)(e) setting fee for heating oil; at beginning of (2), after "Gasoline", inserted "aviation gasoline, special fuel, and heating oil"; in (4), near beginning of second sentence after "balance", inserted "less claims anticipated for board approval within the next 90 days"; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 3, Ch. 298, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to all tax revenue recorded on or after July 1, 1993."

75-11-315 through 75-11-317 reserved.

75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(2), shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business as may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) The board may hire staff, and the department shall provide staff support to the board as the department determines it is able. The board shall use the fund to pay its staff expenses, to pay for department staff utilized for the review or preparation of corrective action plans and for the oversight of corrective action undertaken by owners and operators for the purposes of this part, and to pay for department of transportation staff utilized for the collection of the petroleum storage tank cleanup fee.

(5) The board shall adopt rules to administer this part, including:

(a) rules governing submission of claims by owners or operators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part; and

(e) other rules necessary for the administration of this part.

History: En. Sec. 9, Ch. 528, L. 1989; amd. Sec. 5, Ch. 763, L. 1991.

75-11-319. Rulemaking authority — department and department of transportation. (1) The department may adopt rules necessary to administer its responsibilities under this part, including requirements for approval of corrective action plans.

(2) The department of transportation shall adopt rules governing the collection of the petroleum storage tank cleanup fee. The rules may include, at a minimum, reporting and recordkeeping requirements, method and timing of payment, and examination of records. The rules must be generally consistent with procedures governing the collection of the gasoline license tax provided for in Title 15, chapter 70.

History: En. Sec. 10, Ch. 528, L. 1989.

75-11-320. Other authorities unaffected. Payment of reimbursement, approval of a corrective action plan, or other action of the department or the board under this part does not affect the authority of the department or any other state agency to pursue an action authorized by Title 75, chapter 10, parts 4 or 7, or any other law or rule that applies to releases from petroleum storage tanks.

History: En. Sec. 11, Ch. 528, L. 1989.

75-11-321. Criminal penalties. A person who knowingly misrepresents the date of discovery of a release, submits or causes to be submitted a fraudulent claim or document, or makes a false statement or representation in seeking or assisting a person to seek reimbursement under this part is subject to a fine not to exceed $10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted of a second or subsequent violation of this section is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both.

History: En. Sec. 12, Ch. 528, L. 1989.

CHAPTERS 12 THROUGH 14

RESERVED

CHAPTER 15

LANDSCAPE MANAGEMENT

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Chapter Cross-References

City-County Planning Boards, Title 76, ch. 1, part 1.

Planning and zoning, Title 76, ch. 2.

County land planning assistance, 90-1-108.

Part 1

Outdoor Advertising

Part Cross-References

Beauty of the state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

75-15-101. Short title. This part may be cited as the "Outdoor Advertising Act".

History: En. Sec. 1, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4715(b).

75-15-102. Policy. The legislature finds and declares that in order to promote the safety, convenience, and enjoyment of travel on and protection of the public investment in highways within this state and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, it shall be the policy of this state that the erection and maintenance of outdoor advertising in areas adjacent to the right-of-way of the interstate and primary systems within this state shall be regulated in accordance with the terms of this part and the rules promulgated by the commission pursuant thereto. It is the intention of the legislature in this part to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems declared by congress in Title 23, United States Code, "Highways".

History: En. Sec. 1, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4715(a).

75-15-103. Definitions. As used in this part, the following definitions apply:

(1) "Commercial or industrial activities" means for purposes of subsection (14) those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

(d) activities conducted in a building principally used as a residence;

(e) railroad tracks and minor sidings;

(f) activities more than 660 feet from the nearest edge of the right-of-way.

(2) "Commercial or industrial zone" means an area which is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances or regulations or enabling state legislation or state legislation itself, including highway service areas lawfully zoned as highway service zones, where the primary use of the land is or is reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim regulation or map adopted as an emergency measure pursuant to 76-2-206 shall not be considered as covered by this definition.

(3) "Commission" means the highway commission of Montana.

(4) "Department" means the department of transportation.

(5) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the commission may consider desirable.

(6) "Interchange" or "intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, including the deceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

(7) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(8) "Maintain" means to allow to exist, subject to the provisions of this part.

(9) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure in a state suitable for use.

(10) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure which is designed, intended, or used to advertise or inform and which is visible from any place on the main-traveled way of the interstate or primary systems.

(11) "Primary system" means that portion of connected main highways as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(12) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way, by or under public supervision or control, for the convenience of the traveling public.

(13) "Secretary" means the secretary of the United States department of transportation.

(14) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation, or ordinance which is occupied by one or more industrial or commercial activities, other than outdoor advertising, on the lands along the highway for a distance of 600 feet immediately adjacent to the activities and those lands directly opposite on the other side of the highway to the extent of the same dimensions and to a maximum depth of 660 feet when measured from the highway right-of-way; provided those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the commission.

(15) "Urban area" means an urbanized area or place, as designated by the United States bureau of the census, having a population of 5,000 or more and within boundaries fixed by the department, which boundaries shall as a minimum encompass the entire urban place designated by said bureau of the census.

(16) "Visible" means capable of being seen and legible without visual aid by a person of normal visual acuity.

History: (1) thru (3), (5) thru (16)En. Sec. 2, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 89, L. 1974; amd. Sec. 1, Ch. 216, L. 1975; (4)En. by Code Commissioner, 1979; R.C.M. 1947, 32-4716; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

General provisions — Highway Commission, Title 60, ch. 2, part 1.

General provisions — Department of Transportation — Title 60, ch. 2, part 2.

75-15-104. More restrictive regulations preserved. Nothing in this part shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this part.

History: **En. Sec. 11, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4725.**

75-15-105. Relaxation of regulations if federal law changed. In the event the general requirements of Title 23, United States Code, "Highways", or existing rules and regulations of the United States department of transportation become amended or changed to less restrictive conditions than presently exist, then the commission must amend or change such rules that it may have adopted to come into conformity with the federal law, rule, and regulation; however, in no event shall this part become more restrictive than is indicated herein by said federal action.

History: **En. Sec. 12, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4726.**

75-15-106 through 75-15-110 reserved.

75-15-111. Outdoor advertising prohibited in proximity to highway — exceptions. (1) Outdoor advertising may not be erected or maintained which is within 660 feet of the nearest edge of the right-of-way and which is visible from any place on the main-traveled way of an interstate or primary system except:

(a) directional and other official signs and notices, which signs and notices include but are not limited to signs and notices pertaining to natural wonders and scenic and historical attractions, as authorized or required by law;

(b) signs, displays, and devices advertising the sale or lease of property upon which they are located;

(c) signs, displays, and devices advertising activities conducted on the property upon which they are located;

(d) signs, displays, and devices located in areas which are zoned industrial or commercial by a bona fide state, county, or local zoning authority;

(e) signs, displays, and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the department and the secretary and defined by rules adopted by the commission. The exception granted by this subsection shall not apply to signs, displays, and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of 9 months.

(f) signs or displays advertising the cultural exhibits of nonprofit historical or arts organizations if the signs or displays conform with the standards provided in Title 23, Code of Federal Regulations, section 750, subpart B; or

(g) signs that are consistent with the policy of this state and with the national policy set forth in 23 U.S.C. 131 and the regulations promulgated thereunder and that are designed to provide information in the specific interest of the traveling public as provided in 60-5-504, 60-5-505, 60-5-511 through 60-5-513, and 60-5-519 through 60-5-521.

(2) Outdoor advertising authorized under subsections (a), (d), and (e) of (1) of this section shall conform with standards contained in and shall bear permits required in rules which are adopted by the commission and this part.

(3) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area if such outdoor advertising is or was erected with the purpose of its message being read from such main-traveled way and visible from such main-traveled way unless such outdoor advertising meets the

criteria of subsections (a), (b), or (c) of (1) of this section. Should such outdoor advertising meet said criteria, it shall conform with standards contained in rules which are adopted by the commission and this part.

History: En. Sec. 3, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 160, Ch. 316, L. 1974; amd. Sec. 2, Ch. 216, L. 1975; R.C.M. 1947, 32-4717; amd. Sec. 1, Ch. 497, L. 1981; amd. Sec. 19, Ch. 537, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

75-15-112. Unlawful advertising. Outdoor advertising is unlawful:

(1) when erected after June 24, 1971, contrary to this part or erected after June 24, 1971, beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area with the purpose of its message being read from such main-traveled way and visible from such main-traveled way, unless such outdoor advertising meets the criteria of subsections (a), (b), or (c) of 75-15-111(1);

(2) when a permit is not obtained as prescribed in this part; or

(3) when a permittee fails to comply with a notice of violation as provided in 75-15-132.

History: En. Sec. 8, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 89, L. 1974; amd. Sec. 165, Ch. 316, L. 1974; amd. Sec. 5, Ch. 216, L. 1975; amd. Sec. 4, Ch. 234, L. 1977; R.C.M. 1947, 32-4722(1).

75-15-113. Standards for permitted advertising. Except for outdoor advertising beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area, outdoor advertising permitted under subsections (1)(d) and (1)(e) of 75-15-111 shall conform to the following requirements:

(1) Signs may not be erected or maintained which exceed 1,200 square feet in area, including border and trim but excluding base or apron, supports, and other structural members.

(2) Maximum length, 60 feet.

(3) Maximum height, 40 feet as measured from the ground or, if the sign is attached to a structure, as measured from the base of the sign itself.

(4) No more than two facings visible and readable from the same direction on the main-traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither shall exceed 325 square feet.

(5) Double-faced, back-to-back, and V-type signs shall be considered as a single sign or structure.

(6) Where two or more faces, back to back, are supported by separate structures, each shall be considered a single sign.

(7) No two signs shall be spaced less than 500 feet apart adjacent to an interstate highway or limited-access primary highway, except that signs may be erected closer than 500 feet if they are separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the highway at any one time.

(8) Signs may not be located within 500 feet of any of the following which are adjacent to the highway unless the signs are in an incorporated area:

(a) public parks;

(b) public forests;

(c) public playgrounds;

(d) scenic areas designated as such by the department or other state agency having and exercising this authority;

(e) cemeteries.

(9) A sign may not be located on an interstate highway or freeway within 500 feet of an interchange or intersection at grade or rest area. The 500 feet is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way.

(10) Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by a flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

(b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at a portion of the traveled ways of the interstate or federal-aid primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or which otherwise interfere with a driver's operation of a motor vehicle are prohibited.

(c) A sign may not be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device, or signal.

(11) The location of sign structures situated on the primary highways between streets, roads, or highways entering or intersecting the main-traveled way shall conform to the following minimum spacing criteria:

(a) Where the distance between centerlines of intersecting streets or highways is less than 1,000 feet, a minimum spacing between structures of 150 feet may be permitted between the intersecting streets or highways.

(b) Where the distance between centerlines of intersecting streets or highways is 1,000 feet or more, minimum spacing between sign structures shall be 300 feet.

History: En. Sec. 5, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 2, Ch. 89, L. 1974; amd. Sec. 162, Ch. 316, L. 1974; amd. Sec. 3, Ch. 216, L. 1975; R.C.M. 1947, 32-4719; amd. Sec. 1, Ch. 45, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.

75-15-114 through 75-15-120 reserved.

75-15-121. Commission rules authorized. The commission may adopt rules to control the erection and maintenance of outdoor advertising along the interstate and primary highway systems in conformance with the terms of this part and in conformity with section 131 of Title 23, United States Code, as amended.

History: En. Sec. 4, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 161, Ch. 316, L. 1974; R.C.M. 1947, 32-4718.

75-15-122. Permits required — identification tags — preexisting structures. (1) A sign authorized by subsections (a), (d), and (e) of 75-15-111(1) may not be constructed or maintained without a permit. Applications for permits shall be made to the department on forms furnished by it. The department shall require reasonable information to be furnished, including a statement that the owner or occupant of the land has consented to the erection or maintenance of the sign on the land. A permit must be obtained for each sign, and the application for the permit must be accompanied by an initial fee of $6.

(2) Permits shall be issued for 3 years, assigned a permit number, and renewed every 3 years thereafter upon payment of $3 without the filing of a new application. All fees received shall be paid into the highway account in the state special revenue fund.

(3) The department shall issue with each new permit a permanent identification tag not larger than 36 square inches which shall be affixed to the sign in a position readily visible from the highway.

(4) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for a structure lawfully in existence on June 23, 1971, and the permits shall thereafter be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance.

(5) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for outdoor advertising lawfully in existence on June 23, 1971, and made nonconforming by virtue of 75-15-111(3), and the permits shall thereafter be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance.

History: En. Sec. 6, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 163, Ch. 316, L. 1974; amd. Sec. 1, Ch. 22, L. 1975; amd. Sec. 4, Ch. 216, L. 1975; R.C.M. 1947, 32-4720; amd. Sec. 1, Ch. 277, L. 1983.

75-15-123. Acquisition of outdoor advertising rights — compensation. (1) The department may acquire by gift, purchase, agreement, exchange, or eminent domain existing outdoor advertising and property rights pertaining to advertising that was lawfully in existence on June 24, 1971, and which by virtue of 75-15-111(1) is nonconforming. Eminent domain shall be exercised in accordance with the laws of the state.

(2) Just compensation shall be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found in violation of 75-15-112 or 75-15-132 without payment of compensation.

(3) Except as provided in 75-15-131 and 75-15-132, a sign may not be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section and unless at that time the federal funds required to be contributed under section 131(g) of Title 23, United States Code, with respect to the outdoor advertising being removed have been apportioned and are immediately available to this state.

History: En. Sec. 9, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 166, Ch. 316, L. 1974; amd. Sec. 6, Ch. 216, L. 1975; R.C.M. 1947, 32-4723(part); amd. Sec. 14, Ch. 68, L. 1979.

Cross-References

Acquisition of property by eminent domain, 70-30-103.

75-15-124. Agreements with secretary establishing specifications for advertising. The department may enter into an agreement with the secretary regarding the size, lighting, and spacing of outdoor advertising, as provided in this part, which may be erected and maintained within the areas adjacent to the interstate and primary highway system which are zoned commercial, industrial, or in such other unzoned commercial or industrial areas as may be determined by agreement and as provided in this part.

History: En. Sec. 10, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 167, Ch. 316, L. 1974; R.C.M. 1947, 32-4724.

75-15-125 through 75-15-130 reserved.

75-15-131. Entry to inspect — notice of unlawful advertising — remedial action. (1) The department may enter upon lands bearing outdoor advertising and make examination of such advertising.

(2) The department shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and to the owner of the outdoor advertising structure if the latter is known or, if unknown, by posting notice in a conspicuous place on the structure of its intention to remove the unlawful advertising. Within 45 days after the notice, the owner of the land or of the structure may make a written request for a hearing before the commission to show cause why the structure should not be removed.

(3) If a hearing before the commission is not requested or if there is no appeal taken from the commission's decision at the hearing or if the commission's decision is affirmed on appeal, the department shall immediately remove or cause to be removed the unlawful outdoor advertising. The department may, upon final determination by the commission that an item of outdoor advertising is unlawful, enter upon lands bearing such advertising and remove the unlawful advertising.

(4) The owner of the structure and the owner or occupant of the land are jointly and severally liable for the costs of the removal.

History: En. Sec. 8, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 89, L. 1974; amd. Sec. 165, Ch. 316, L. 1974; amd. Sec. 5, Ch. 216, L. 1975; amd. Sec. 4, Ch. 234, L. 1977; R.C.M. 1947, 32-4722(2), (3).

Cross-References

Joint and several liability, 27-1-703.

75-15-132. False application or disrepair of structure — remedial action. When the department determines that a willful false or misleading statement has been made in the application for a permit or that the structure for which a permit was issued is not in a reasonable state of repair or is unsafe, the department shall notify the holder of the permit in writing, either by certified mail or by personal service, of the violation and specify that remedial action shall be taken within 60 days or the permit will be revoked and action for removal of the sign commenced as provided in 75-15-131. No notice is required prior to filing a complaint after the notice period has lapsed.

History: En. Sec. 7, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 164, Ch. 316, L. 1974; R.C.M. 1947, 32-4721.

75-15-133. Nonconforming advertising as nuisance. All outdoor advertising which does not conform to the requirements of this part is a public nuisance.

History: En. Sec. 16, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 140, L. 1977; R.C.M. 1947, 32-4728.

Cross-References

Public nuisance, 27-30-102, 45-8-111.

75-15-134. Violation as misdemeanor. Any person violating any provision of this part is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4727.

Cross-References

Misdemeanor penalty when no penalty specified, 46-18-212.

Part 2
Junkyards

Part Cross-References

Motor vehicle recycling and disposal, Title 75, ch. 10, part 5.

75-15-201. Purposes. (1) For the purposes of promoting the public safety, health, and welfare and the convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and primary systems within this state.

(2) The legislature hereby finds and declares that junkyards which do not conform to the requirements of this part are public nuisances.

History: En. Sec. 1, Ch. 285, L. 1967; R.C.M. 1947, 32-4513.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Public nuisance, 27-30-102, 45-8-111.

75-15-202. Interpretation. Nothing in this part shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this part.

History: En. Sec. 11, Ch. 285, L. 1967; R.C.M. 1947, 32-4523.

75-15-203. Definitions. As used in this part only, the following definitions apply:

(1) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may hereafter be so designated by the state highway commission and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways".

(2) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, or waste; iron, steel, and other old or scrap ferrous or nonferrous material.

(3) "Junkyard" means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, excluding a motor vehicle graveyard or motor vehicle wrecking facility which is regulated under Title 75, chapter 10, part 5, and excluding a garbage dump or sanitary landfill which is regulated under Title 75, chapter 10, part 2.

(4) "Primary system" means that portion of connected main highways as officially designated or as may hereafter be so designated by the commission and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways".

History: En. Sec. 2, Ch. 285, L. 1967; R.C.M. 1947, 32-4514; amd. Sec. 1, Ch. 340, L. 1983.

75-15-204. Agreements with the United States. The department of transportation may enter into agreements with the United States secretary of transportation as provided in Title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems and take action in the name of the state to comply with the terms of those agreements.

History: En. Sec. 10, Ch. 285, L. 1967; amd. Sec. 159, Ch. 316, L. 1974; R.C.M. 1947, 32-4522; amd. Sec. 3, Ch. 512, L. 1991.

75-15-205. Injunction. The department of transportation may apply to the district court for the county in which is located any junkyard not conforming to the requirements of this part for an injunction to abate such nuisance.

History: En. Sec. 9, Ch. 285, L. 1967; amd. Sec. 158, Ch. 316, L. 1974; R.C.M. 1947, 32-4521; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Injunctions, Title 27, ch. 19.

75-15-206 through 75-15-210 reserved.

75-15-211. License required. No person shall establish, operate, or maintain a junkyard, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway, without obtaining a license.

History: En. Sec. 3, Ch. 285, L. 1967; amd. Sec. 12, Ch. 410, L. 1973; R.C.M. 1947, 32-4515.

75-15-212. Repealed. Sec. 5, Ch. 340, L. 1983.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(1).

75-15-213. Repealed. Sec. 5, Ch. 340, L. 1983.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(2).

75-15-214. License for junkyards. (1) The department of transportation may issue a license for a junkyard.

(2) The department of transportation may acquire an interest in land for screening purposes or may pay for screening installation and materials as authorized by this part.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(3), (4); amd. Sec. 2, Ch. 340, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Department of Transportation, Title 2, ch. 15, part 25.

General powers and duties of Department of Transportation, Title 60, ch. 2, part 2.

75-15-215. Restrictions as to location. No license may be granted for the establishment, maintenance, or operation of a junkyard within 1,000 feet of the nearest edge of the right-of-way of a highway on the interstate or primary systems except a license may be granted for a junkyard:

(1) screened by natural objects, planted objects, fences, or other appropriate means so as not to be visible from the main-traveled way of any such highway or otherwise removed from sight;

(2) located within an area zoned for industrial use under authority of law;

(3) located within an unzoned industrial area, as determined from actual land uses and defined by rules promulgated by the department of transportation;

(4) that is not visible from the main-traveled way of any such highway.

History: En. Sec. 5, Ch. 285, L. 1967; R.C.M. 1947, 32-4517; amd. Sec. 15, Ch. 68, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.

75-15-216 through 75-15-220 reserved.

75-15-221. Repealed. Sec. 2, Ch. 61, L. 1979.

History: En. Sec. 6, Ch. 285, L. 1967; amd. Sec. 155, Ch. 316, L. 1974; R.C.M. 1947, 32-4518.

75-15-222. Rules governing screening. (1) The department of transportation may adopt rules governing the materials to be used in and the location, planting, construction, and maintenance of screening or fencing required by this part.

(2) The department of transportation may determine that in the best interests of the state, screening in addition to that required by rules of the department of transportation as of July 1, 1979, is required of certain junkyards or motor vehicle wrecking facilities licensed under this title. The cost of any additional screening shall be borne or reimbursed by the department of transportation.

History: En. Sec. 7, Ch. 285, L. 1967; amd. Sec. 156, Ch. 316, L. 1974; amd. Sec. 10, Ch. 252, L. 1977; R.C.M. 1947, 32-4519; amd. Sec. 1, Ch. 61, L. 1979; amd. Sec. 3, Ch. 340, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-15-223. Authority to acquire interest in land for screening and removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills. (1) When the department of transportation determines that it is in the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the department of transportation determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange, or condemnation such interests in lands as may be necessary to secure the relocation, removal, or disposal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, or sanitary landfills which were either lawfully:

(a) in existence on October 22, 1965;

(b) along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) established on or after January 1, 1968.

(3) The department of transportation shall pay just compensation to the owner for the relocation, removal, or disposal of any such facility.

(4) Any new site chosen by the department of transportation pursuant to subsection (2) for the relocation of a garbage dump or sanitary landfill must be approvable as the site of a solid waste management system pursuant to

Title 75, chapter 10, part 2, and the rules promulgated under authority of that part.

History: En. Sec. 8, Ch. 285, L. 1967; amd. Sec. 157, Ch. 316, L. 1974; R.C.M. 1947, 32-4520; amd. Sec. 4, Ch. 340, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Department of Transportation, Title 2, ch. 15, part 25.

General powers and duties of Department of Transportation, Title 60, ch. 2, part 2.

CHAPTER 16

TRANSBOUNDARY POLLUTION

Part 1 — Uniform Transboundary Pollution Reciprocal Access Act

75-16-101. Short title.
75-16-102. Definitions.
75-16-103. Forum.
75-16-104. Right to relief.
75-16-105. Applicable law.
75-16-106. Equality of rights.
75-16-107. Right additional to other rights.
75-16-108. Application of sovereign immunity.
75-16-109. Uniformity of application and construction.

Chapter Cross-References

Canadian Boundary Advisory Committee, Title 1, ch. 13, part 1.

Part 1

Uniform Transboundary Pollution Reciprocal Access Act

75-16-101. Short title. This part may be cited as the "Uniform Transboundary Pollution Reciprocal Access Act".

History: En. Sec. 1, Ch. 203, L. 1983.

75-16-102. Definitions. As used in this part, the following definitions apply:

(1) "Person" means an individual person, corporation, business trust, estate, partnership, association, joint venture, government in its private or public capacity, governmental subdivision or agency, or any other legal entity.

(2) "Reciprocating jurisdiction" means a state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a province or territory of Canada, which has enacted this part or provides substantially equivalent access to its courts and administrative agencies.

History: En. Sec. 2, Ch. 203, L. 1983.

75-16-103. Forum. An action or other proceeding for injury or threatened injury to property or person in a reciprocating jurisdiction caused by pollution originating or that may originate in this state may be brought in this state.

History: En. Sec. 3, Ch. 203, L. 1983.

Cross-References
Persons subject to jurisdiction, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

75-16-104. Right to relief. A person who suffers or is threatened with injury to his person or property in a reciprocating jurisdiction caused by pollution originating or that may originate in this state has the same rights to relief with respect to the injury or threatened injury and may enforce those rights in this state as if the injury or threatened injury occurred in this state.

History: En. Sec. 4, Ch. 203, L. 1983.

Cross-References
Injury defined, 27-1-106.
Kinds of relief — when given, 27-1-107.

75-16-105. Applicable law. The law to be applied in an action or other proceeding brought pursuant to this part, including what constitutes "pollution", is the law of this state, excluding choice of law rules.

History: En. Sec. 5, Ch. 203, L. 1983.

Cross-References
Issues of law to be decided by court, 25-7-102.
Determination of foreign law, Rule 44.1, M.R.Civ.P. (see Title 25, ch. 20).

75-16-106. Equality of rights. This part does not accord a person injured or threatened with injury in another jurisdiction any rights superior to those that the person would have if injured or threatened with injury in this state.

History: En. Sec. 6, Ch. 203, L. 1983.

Cross-References
Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

75-16-107. Right additional to other rights. The right provided in this part is in addition to and not in derogation of any other rights.

History: En. Sec. 7, Ch. 203, L. 1983.

75-16-108. Application of sovereign immunity. The defense of sovereign immunity is applicable in any action or other proceeding brought pursuant to this part only to the extent that it would apply to a person injured or threatened with injury in this state.

History: En. Sec. 8, Ch. 203, L. 1983.

Cross-References
State subject to suit, Art. II, sec. 18, Mont. Const.
Government liability exposure, Title 2, ch. 9, part 1.
Claims and actions against state, Title 2, ch. 9, part 3.

75-16-109. Uniformity of application and construction. This part shall be applied and construed to carry out its general purpose to make uniform the law with respect to the subject of this part among jurisdictions enacting it.

History: En. Sec. 9, Ch. 203, L. 1983.

CHAPTERS 17 THROUGH 19

RESERVED

CHAPTER 20

MAJOR FACILITY SITING

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Part 10 — Geothermal Exploration

75-20-1001. Geothermal exploration — notification of department.

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75-20-1201. Purpose — findings as to nuclear safety — reservation of nuclear facility approval powers to the people.
75-20-1202. Definitions.
75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility.
75-20-1204. Annual review of evacuation and emergency medical aid plans.
75-20-1205. Emergency approval authority invalid for nuclear facilities.

Chapter Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Application of nuclear regulation provisions, 75-3-302.

Montana Hazardous Waste Act, Title 75, ch. 10, part 4.

Part 1

Policy and General Provisions

75-20-101. Short title. This chapter shall be known and may be cited as the "Montana Major Facility Siting Act".

History: En. Sec. 1, Ch. 327, L. 1973; amd. Sec. 1, Ch. 494, L. 1975; R.C.M. 1947, 70-801.

Cross-References

State policy of consistency and continuity in the adoption and application of environmental rules, 90-1-101.

75-20-102. Policy and legislative findings. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) The legislature finds that the construction of additional power or energy conversion facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a power or energy conversion facility may not be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this chapter.

History: En. Sec. 2, Ch. 327, L. 1973; amd. Sec. 2, Ch. 494, L. 1975; R.C.M. 1947, 70-802.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-20-103. Chapter supersedes other laws or rules. This chapter supersedes other laws or regulations except as provided in 75-20-401. If any provision of this chapter is in conflict with any other law of this state or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. Amendments to this chapter shall have the same effect.

History: En. Sec. 23, Ch. 327, L. 1973; amd. Sec. 23, Ch. 494, L. 1975; R.C.M. 1947, 70-823; amd. Sec. 1, Ch. 676, L. 1979.

75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

(e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

History: En. Sec. 3, Ch. 327, L. 1973; amd. Sec. 1, Ch. 231, L. 1974; amd. Sec. 1, Ch. 268, L. 1974; amd. Sec. 3, Ch. 494, L. 1975; R.C.M. 1947, 70-803; amd. Sec. 1, Ch. 133, L. 1979; amd. Sec. 1, Ch. 527, L. 1979; amd. Sec. 2, Ch. 676, L. 1979; amd. Sec. 1, Ch. 539, L. 1981; amd. Sec. 8, Ch. 573, L. 1985; amd. Sec. 1, Ch. 597, L. 1987.

Cross-References

Pipeline carriers, Title 69, ch. 13.

The Montana Strip and Underground Mine Reclamation Act, Title 82, ch. 4, part 2.

75-20-105. Adoption of rules. The board may adopt rules implementing the provisions of this chapter.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(1); amd. Sec. 1, Ch. 312, L. 1987.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-20-106. Contracts for information. (1) The department may contract with a potential applicant under this chapter in advance of the filing of a formal application for the development of information or provision of services required hereunder.

(2) Payments made to the department under such a contract shall be credited against the fee payable hereunder.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(2)(c).

75-20-107 through 75-20-110 reserved.

75-20-111. Grants, gifts, and funds. The department may receive grants, gifts, and other funds from any public or private source to assist in its activities under this chapter.

History: En. Sec. 22, Ch. 327, L. 1973; amd. Sec. 22, Ch. 494, L. 1975; R.C.M. 1947, 70-822.

75-20-112. Money to state special revenue fund. All fees, taxes, fines, and penalties collected under this chapter, except those collected by a justice's court, shall be deposited in the state special revenue fund for use by the department in carrying out its functions and responsibilities under this chapter.

History: En. 70-824 by Sec. 3, Ch. 270, L. 1975; R.C.M. 1947, 70-824; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 46, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Fund structure, 17-2-102.

Part 2
Certification Proceedings

75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities. (1) A person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility and public need issued with respect to the facility by the board.

(2) A facility with respect to which a certificate is issued may not thereafter be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained therein.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the board decides to issue a certificate for a nuclear facility, it shall report such recommendation to the applicant and may not issue the certificate until such recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(1); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 1, Ch. 167, L. 1983.

Cross-References

Facilities subject to Federal Energy Regulatory Commission jurisdiction, 75-20-204.

75-20-202. Exemptions. (1) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) utilizes coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

(3) A person proposing to construct an exempt facility shall pay to the department reasonable costs, if any, incurred by the department in processing the exemption.

(4) This chapter does not apply to a facility defined in 75-20-104(10)(c) that has been designated by the governor for environmental review by an executive agency of the state for the purpose of complying with Title 75, chapter 1, pursuant to Executive Order 4-81 and prior to July 1, 1985.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(3) thru (5); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 2, Ch. 539, L. 1981; amd. Sec. 2, Ch. 167, L. 1983; amd. Sec. 9, Ch. 573, L. 1985; amd. Sec. 1, Ch. 591, L. 1985.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-20-203. Certificate transferable. A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, conditions, and modifications contained therein.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(2); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 3, Ch. 676, L. 1979.

75-20-204. Facilities subject to federal energy regulatory commission jurisdiction. (1) For a facility that is subject to the jurisdiction of the federal energy regulatory commission, the department shall file a state recommendation with the commission.

(2) A person making application to the federal energy regulatory commission shall file with the department notice of and a copy of the federal application regarding any facility subject to subsection (1). The state recommendation must be based on its study of the federal application and other material gained through intervention in the federal proceeding.

(3) A person subject to the provisions of subsection (2) shall pay a fee to the department pursuant to 85-2-124 at the time an application is filed with the federal energy regulatory commission. The fee shall be used by the department to carry out its responsibilities under Title 85, chapter 2, and to develop a state recommendation and participate as a party in any necessary federal proceeding to assert the state recommendation. No fee prescribed by 75-20-215 may be assessed against a person paying a fee under this section.

(4) Any person who fails to file a timely notice of and a copy of the federal application with the department so as to prevent the department from timely compliance with this section and with the rules, statutes, or procedures governing the proceedings before the federal energy regulatory commission is subject to the provisions of 75-20-408.

History: En. Sec. 2, Ch. 591, L. 1985.

75-20-205. Centerline location. (1) For all facilities defined in 75-20-104(10)(b) and (10)(c) and associated facilities certified under this chapter, the board shall condition the certificate upon board approval of a final centerline location.

(2) The final centerline location must be determined in a noncontested case proceeding before the board after the submission of a centerline location report by the department. Within 60 days after the commencement of a noncontested case proceeding, the board shall render and record a decision approving a centerline location.

(3) The department shall consult with the certificate holder and the affected landowners prior to making its report.

(4) The department's report must be prepared considering the criteria set forth in 75-20-301 and 75-20-503 and the findings of fact and conclusions of law set out in the board decision.

(5) The department report may be completed on segments of a certified facility as is convenient to the certificate holder.

(6) The certificate holder shall initiate the final centerline location approval process by submitting a proposed centerline location plan to the department. The certificate holder shall pay to the department the actual costs incurred in processing a final centerline location not to exceed 25% of the filing fee paid under 75-20-215.

History: En. Sec. 4, Ch. 591, L. 1985; amd. Sec. 1, Ch. 246, L. 1987.

75-20-206 reserved.

75-20-207. Notice requirement for certain electric transmission lines. Whenever a person plans to construct an electric transmission line or associated facilities of a design capacity of more than 69 kilovolts and up to and including 115 kilovolts that is more than 10 miles in length, it must provide public notice to persons residing in the area in which any portion of the electric transmission facility may be located and to the department. This notice must be made no less than 180 days prior to the commencement of acquisition of right-of-way by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those persons of the construction and by mailing such a summary to the department. The notice must inform the property owners of their rights under this chapter concerning the location of the facility and that more information concerning their rights may be obtained from the department.

History: En. Sec. 2, Ch. 597, L. 1987.

75-20-208. Certain electric transmission lines — verification of requirements. (1) Prior to constructing a transmission line under 75-20-104(10)(b)(ii), the person planning to construct the line must provide to the department within 36 months of the date of the public notice provided under 75-20-207, unless extended by the board for good cause:

(a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information to establish landowner consent to construct the line; and

(b) sufficient information for the department to verify to the board that the requirements of 75-20-104(10)(b)(ii) are satisfied.

(2) The provisions of 75-20-104(10)(b)(ii) do not apply to any facility for which public notice under 75-20-207 has been given but for which the requirements of subsection (1) have not been complied with.

History: En. Sec. 3, Ch. 597, L. 1987.

75-20-209 and 75-20-210 reserved.

75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required under the laws administered by the department of health and the board of health in such form as the board requires under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built thereon;

(ii) a summary of any studies which have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) for facilities defined in 75-20-104(10)(b) and (10)(c), a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(v) (A) for facilities as defined in 75-20-104(10)(b) and (10)(c), baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104(10)(a), (10)(d), and (10)(e), baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vii) such other information as the applicant considers relevant or as the board and board of health by order or rule or the department and department of health by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(3) An application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of state lands;

(e) department of commerce;

(f) department of transportation.

(4) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application shall also be accompanied by proof that public notice thereof was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch.

179, L. 1977; R.C.M. 1947, 70-806(part); amd. Sec. 1, Ch. 553, L. 1979; amd. Sec. 4, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 3, Ch. 539, L. 1981; amd. Sec. 2, Ch. 312, L. 1987; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Department of Revenue, 2-15-1301.

Department of Commerce, 2-15-1801.

Department of Public Service Regulation, 2-15-2601; Title 69, ch. 1, part 1.

Environmental Quality Council, Title 5, ch. 16.

Educational impact statement required — judicial enforcement, 20-1-208, 20-1-209.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

Air quality permit required, 75-2-211.

Water quality permit required, Title 75, ch. 5, part 4.

Department of State Lands — general powers and duties, Title 77, ch. 1, part 3.

Department of Fish, Wildlife, and Parks — general powers and duties, Title 87, ch. 1, part 2.

75-20-212. Cure for failure of service. Inadvertent failure of service on or notice to any of the municipalities, government agencies, or persons identified in 75-20-211(3) and (5) may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(part).

75-20-213. Supplemental material — amendments. (1) An application for an amendment of an application or a certificate shall be in such form and contain such information as the board by rule or the department by order prescribes. Notice of such an application shall be given as set forth in (3), (4), and (5) of 75-20-211.

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department, the department of health, or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under this chapter, the department may require such additional filing fees as the department determines necessary, or the department may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required shall be conclusive.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(6); amd. Sec. 5, Ch. 676, L. 1979.

75-20-214. Repealed. Sec. 8, Ch. 591, L. 1985.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(7); amd. Sec. 6, Ch. 676, L. 1979.

75-20-215. Filing fee — accountability — refund — use. (1) (a) A filing fee shall be deposited in the state special revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter, but which shall not exceed the following scale based upon the estimated cost of the facility:

(i) 4% of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to $20 million; plus

(iii) 0.5% of any estimated cost over $20 million and up to $100 million; plus

(iv) 0.25% of any amount of estimated cost over $100 million and up to $300 million; plus

(v) 0.125% of any amount of estimated cost over $300 million and up to $1 billion; plus

(vi) 0.05% of any amount of estimated cost over $1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required hereunder or required for preparation of an environmental impact statement under the Montana or national environmental policy acts. The applicant may submit the information to the department together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount which may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under such a contract shall be credited against the fee payable hereunder. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, the department of health, the board, the board of health, and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) above upon 30 days' notice to the applicant. The department and applicant may enter into a contract which exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of moneys expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this

chapter. A refund shall be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenues derived from filing fees shall be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(2)(a), (2)(b); amd. Sec. 7, Ch. 676, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 128, L. 1985.

Cross-References

Fund structure, 17-2-102.

Application of nuclear regulation provisions, 75-3-302.

Facilities subject to Federal Energy Regulatory Commission jurisdiction — different fee requirement, 75-20-204.

75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months, issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the proposed location or any proposed alternate location in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The

decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and (d) of 75-20-104(10) and for a facility as defined in (b) and (c) of 75-20-104(10) which is more than 30 miles in length, and within 1 year for a facility as defined in (b) and (c) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of transportation; commerce; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1945, 70-807(1), (2); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 8, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 4, Ch. 539, L. 1981; amd. Sec. 3, Ch. 312, L. 1987; amd. Sec. 139, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Montana Environmental Policy Act, Title 75, ch. 1.

75-20-217. Voiding an application. An application may be voided by the department for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by this chapter and the rules adopted thereunder; or

(3) failure to deposit the filing fee as provided in 75-20-215.

History: En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975; R.C.M. 1947, 70-818(2); amd. Sec. 9, Ch. 676, L. 1979.

75-20-218. Hearing date — location — department to act as staff — hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of health shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of health and the board of health.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1947, 70-807(4); amd. Sec. 10, Ch. 676, L. 1979; amd. Sec. 5, Ch. 539, L. 1981; amd. Sec. 10, Ch. 573, L. 1985.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Department of Revenue, 2-15-1301.

Department of Commerce, 2-15-1801.

Department of Public Service Regulation, 2-15-2601; Title 69, ch. 1, part 1.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

Public hearings on air quality rules, 75-2-205.

Public hearings on water quality rules, 75-5-307.

Provisions applicable to certificate renewal proceedings, 75-20-227.

Department of State Lands — general powers and duties, Title 77, ch. 1, part 3.

Department of Fish, Wildlife, and Parks — general powers and duties, Title 87, ch. 1, part 2.

75-20-219. Amendments to a certificate. (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with such conditions as it deems appropriate.

(2) In those cases where the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon such terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden

of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

(5) If an amendment is required to a certificate which would affect, amend, alter or modify a decision, opinion, order, certification, or permit issued by the department of health or board of health, such amendment must be processed under the applicable statutes administered by the department of health or board of health.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1947, 70-807(3); amd. Sec. 11, Ch. 676, L. 1979; amd. Sec. 1, Ch. 372, L. 1981; amd. Sec. 4, Ch. 312, L. 1987.

Cross-References

Provisions applicable to certificate renewal proceedings, 75-20-227.

75-20-220. Hearing examiner — restrictions — duties. (1) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board, an employee of the department, or a member or employee of the department of health or board of health. A hearing examiner, if any, shall be appointed by the board within 20 days after the department's report has been filed with the board. If a hearing is held before the board of health or the department of health, the board and the board of health or the department of health shall mutually agree on the appointment of a hearing examiner to preside at both hearings.

(2) A prehearing conference shall be held following notice within 60 days after the department's report has been filed with the board.

(3) The prehearing conference shall be organized and supervised by the hearing examiner.

(4) The prehearing conference shall be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties, all direct testimony which they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on shall be submitted and served in like manner, at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery which shall be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised which are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board and in the case of a conjunctive hearing, within 90 days to the board and the board of health or department of health proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall insure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) of this section to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed.

History: En. Sec. 9, Ch. 327, L. 1973; amd. Sec. 9, Ch. 494, L. 1975; R.C.M. 1947, 70-809(3); amd. Sec. 12, Ch. 676, L. 1979; amd. Sec. 6, Ch. 539, L. 1981.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Provisions applicable to certificate renewal proceedings, 75-20-227.

75-20-221. Parties to certification proceeding — waiver — statement of intent to participate. (1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board of health under this chapter may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency, including the department of health, entitled to receive service of a copy of the application under 75-20-211(3);

(c) any person entitled to receive service of a copy of the application under 75-20-211(5);

(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be located;

(e) any other interested person who establishes an interest in the proceeding.

(2) The department shall be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in (b), (c), (d), or (e) of subsection (1).

(4) Any party waives the right to be a party if the party does not participate in the hearing before the board or the board of health.

(5) Each unit of local government entitled to receive service of a copy of the application under 75-20-211(3) shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent shall be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.

History: En. Sec. 8, Ch. 327, L. 1973; amd. Sec. 8, Ch. 494, L. 1975; R.C.M. 1947, 70-808; amd. Sec. 2, Ch. 553, L. 1979; amd. Sec. 13, Ch. 676, L. 1979.

Cross-References

Provisions applicable to certificate renewal proceedings, 75-20-227.

75-20-222. Record of hearing — procedure — rules of evidence — burden of proof. (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon shall be made a part of the record.

(2) A record shall be made of the hearing and of all testimony taken.

(3) In a certification proceeding held under this chapter, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-20-301 are met.

(4) All proceedings under this chapter are governed by the procedures set forth in this chapter, the procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties to the hearing. No other rules of procedure or evidence shall apply except that the contested case procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures set forth in this chapter or the procedural rules adopted by the board.

History: En. Sec. 9, Ch. 327, L. 1973; amd. Sec. 9, Ch. 494, L. 1975; R.C.M. 1947, 70-809(1), (2); amd. Sec. 14, Ch. 676, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Montana Rules of Evidence, Title 26, ch. 10.

Provisions applicable to certificate renewal proceedings, 75-20-227.

75-20-223 and 75-20-224 reserved.

75-20-225. Certificate renewal — application — contents — filing fee. (1) Any certificate holder for a facility as defined in 75-20-104(10)(a)(i) may apply for renewal of a certificate prior to the certificate lapsing.

(2) An applicant for a renewal of a certificate shall file with the department and department of health a joint application in such form as the board requires by rule.

(3) An application for renewal of a certificate must include updated information on the matters listed in 75-20-211(1)(a) that have changed since the original application and such other information as the board requires by rule for certification. The matters listed in 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate locations must be updated only if the board determines that within the certified location significant changes have occurred to warrant a review of alternate locations.

(4) An application filed under subsection (1) must comply with the provisions of 75-20-211(3) through (5).

(5) Except as provided in this subsection, the applicant shall pay a filing fee to the department in accordance with 75-20-215(2). The fee is in addition to any previous filing fee paid for processing the original application for a certificate pursuant to 75-20-215. The fee may not exceed the following scale:

(a) 0.125% of any estimated cost up to $300 million; plus

(b) 0.063% of any estimated cost over $300 million.

History: En. Sec. 3, Ch. 155, L. 1985.

75-20-226. Renewal study. (1) Upon receipt of a completed application for renewal of a certificate, the department shall evaluate the updated information and any significant changes in need, alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken place since the original study performed in granting the certificate, considering the applicable criteria listed in 75-20-301 and 75-20-503 and the original board findings and certificate conditions.

(2) The department of health and the board of health, within 10 months of acceptance of a complete renewal application, shall complete the statutory duties established in 75-20-216(3). A copy of any decision, opinion, order, certification, or permit must be served on the department and the board and must be used as part of their decisionmaking process.

(3) Within 12 months following acceptance of a complete application for renewal of a certificate, the department shall make a report to the board. This report must contain the department's studies, evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act. The department's report must be directed to the question of whether the original board findings and conditions have been or need to be altered as a result of any significant changes in need, alternatives, technology, baseline environment, or environmental impact since issuance of the certificate, considering the applicable criteria listed in 75-20-301 and 75-20-503.

(4) The departments of transportation; commerce; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each

department's area of responsibility. The report may include opinions as to the advisability of renewing the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the cost of compiling information and issuing the required reports.

History: En. Sec. 4, Ch. 155, L. 1985; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Department of Revenue, 2-15-1301.

Department of Commerce, 2-15-1801.

Department of Public Service Regulation, 2-15-2601; Title 69, ch. 1, part 1.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

Montana Environmental Policy Act, Title 75, ch. 1.

Department of State Lands — general powers and duties, Title 77, ch. 1, part 3.

Department of Fish, Wildlife, and Parks — general powers and duties, Title 87, ch. 1, part 2.

75-20-227. Certificate renewal hearing — decision. (1) The board shall follow the provisions of 75-20-218 through 75-20-222 in making decisions on certificate renewals.

(2) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the renewal application or renewing the certificate with such changes in the terms and conditions as the board considers appropriate.

(3) The board may not renew a certificate either as proposed by the applicant or as modified by the board unless it finds and determines the criteria in 75-20-301 and 75-20-503, considering any significant changes in need, alternatives, technology, baseline environment, and environmental impact.

History: En. Sec. 5, Ch. 155, L. 1985.

Part 3

Decisions

75-20-301. Decision of board — findings necessary for certification. (1) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct shall be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity;

(h) that the department of health or board of health have issued a decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities.

History: En. Sec. 10, Ch. 327, L. 1973; amd. Sec. 10, Ch. 494, L. 1975; R.C.M. 1947, 70-810(1), (3), (4); amd. Sec. 1, Ch. 69, L. 1979; amd. Sec. 15, Ch. 676, L. 1979; amd. Sec. 5, Ch. 312, L. 1987.

Cross-References

Pipeline carriers, Title 69, ch. 13.

Criteria applicable to certificate renewal proceedings, 75-20-226, 75-20-227.

75-20-302. Conditions imposed. (1) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) In making its findings under 75-20-301(2)(a) for a facility defined in 75-20-104(10)(a)(i), the board may condition a certificate upon actual load growth reaching a specified level or on availability of other planned energy resources.

History: **En. Sec. 10, Ch. 327, L. 1973; amd. Sec. 10, Ch. 494, L. 1975; R.C.M. 1947, 70-810(2); amd. Sec. 16, Ch. 676, L. 1979; amd. Sec. 1, Ch. 155, L. 1985.**

75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups; and

(iv) alternatives to the proposed facility;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The board shall issue as part of the certificate the following time limits:

(i) For a facility as defined in (b) or (c) of 75-20-104(10) that is more than 30 miles in length, construction must be completed within 10 years.

(ii) For a facility as defined in (b) of 75-20-104(10) that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in (a) of 75-20-104(10), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended or renewed in accordance with subsection (4)(c) or 75-20-225 through 75-20-227, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) or to begin construction under subsection (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced.

History: En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975; R.C.M. 1947, 70-811(1), (2); amd. Sec. 1, Ch. 120, L. 1979; amd. Sec. 4, Ch. 239, L. 1983; amd. Sec. 2, Ch. 155, L. 1985; amd. Sec. 11, Ch. 573, L. 1985; amd. Sec. 3, Ch. 591, L. 1985.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

Pipeline carriers, Title 69, ch. 13.

75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301 and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), or (e) of 75-20-104, for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under

75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a).

History: En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975; R.C.M. 1947, 70-811(3), (4); amd. Sec. 17, Ch. 676, L. 1979; amd. Sec. 7, Ch. 539, L. 1981; amd. Sec. 6, Ch. 312, L. 1987; amd. Sec. 9, Ch. 157, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 157 in (3), near beginning after "75-20-301", deleted "and 75-20-501(5)". Amendment effective July 1, 1993.

Part 4

Postcertification and Legal Responsibilities

75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions. (1) Notwithstanding any other law, no state or regional agency or municipality or other local government may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the state air and water quality agency or agencies shall retain authority which they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.

History: En. Sec. 17, Ch. 327, L. 1973; amd. Sec. 17, Ch. 494, L. 1975; R.C.M. 1947, 70-817; amd. Sec. 18, Ch. 676, L. 1979.

75-20-402. Monitoring. The board, the department, the department of health, and the board of health shall monitor the operations of all certificated facilities for assuring continuing compliance with this chapter and certificates issued hereunder and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in subsection (3)(b) or (3)(c) of 75-20-303 to the extent federal funds available for the facility, as determined by the department of health, have not been provided for such purposes.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(2); amd. Sec. 19, Ch. 676, L. 1979; amd. Sec. 5, Ch. 591, L. 1985.

75-20-403. Revocation or suspension of certificate. Following notice and an opportunity for a hearing, a certificate may be revoked or suspended by the board:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the board's refusal to grant a certificate;

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of any provision of this chapter, the rules issued thereunder, or orders of the board or department.

History: En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975; R.C.M. 1947, 70-818(1); amd. Sec. 2, Ch. 128, L. 1985.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-20-404. Enforcement of chapter by residents. (1) A resident of this state with knowledge that a requirement of this chapter or a rule adopted under it is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this chapter or a rule adopted under it is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

History: En. Sec. 19, Ch. 327, L. 1973; amd. Sec. 19, Ch. 494, L. 1975; R.C.M. 1947, 70-819(1), (2).

Cross-References

Mandamus, Title 27, ch. 26.

Perjury, 45-7-201.

75-20-405. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedies enumerated in this section do not exclude the use of any other remedy which may be available under the laws of the state.

History: En. Sec. 19, Ch. 327, L. 1973; amd. Sec. 19, Ch. 494, L. 1975; R.C.M. 1947, 70-819(3).

Cross-References

Compensatory damages, right to, 27-1-202.

Consequential damages, 27-1-203.

Punitive damages — breach of obligation, 27-1-221, 27-1-303.

Actions by parties other than state — water quality, 75-5-636.

Adjudication — water rights, Title 85, ch. 2, part 2.

75-20-406. Judicial review of board, board of health, and department of health decisions. (1) Any active party as defined in 75-20-221 aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

(3) When the board of health or department of health conducts hearings pursuant to 75-20-216(3) and 75-20-218 and the applicant is granted a permit or certification, with or without conditions, pursuant to the laws administered by the department of health and the board of health and this chapter, the decision may only be appealed in conjunction with the final decision of the board as provided in subsections (1) and (2). If a permit or certification is denied by the department of health or the board of health, the applicant may:

(a) appeal the denial under the appellate review procedures provided in the laws administered by the department of health and the board of health; or

(b) reserve the right to appeal the denial by the department of health or the board of health until after the board has issued a final decision.

(4) Nothing in this section may be construed to prohibit the board from holding a hearing as herein provided on all matters that are not the subject of a pending appeal by the applicant under subsection (3)(a).

History: En. Sec. 12, Ch. 327, L. 1973; amd. Sec. 12, Ch. 494, L. 1975; R.C.M. 1947, 70-812; amd. Sec. 20, Ch. 676, L. 1979; amd. Sec. 8, Ch. 539, L. 1981.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401, 75-20-406, and 75-20-408, no court of this state has jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the board under this chapter or to stop or delay the construction, operation, or maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate issued hereunder pursuant to 75-20-404 and 75-20-405 or 75-20-408.

History: En. Sec. 13, Ch. 327, L. 1973; amd. Sec. 13, Ch. 494, L. 1975; R.C.M. 1947, 70-813.

75-20-408. Penalties for violation of chapter — civil action by attorney general. (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver thereof under 75-20-304(2) or having first obtained a certificate, constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of this chapter or any rule or order adopted thereunder or knowingly submits false information in any report, 10-year plan, or application required by this chapter or rule or order adopted thereunder or causes any of the aforementioned acts to occur is liable for a civil penalty of not more than $10,000 for each violation.

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than $10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued hereunder. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected shall be deposited in the state special revenue fund for the use of the department in administering this chapter.

History: En. Sec. 21, Ch. 327, L. 1973; amd. Sec. 2, Ch. 270 L. 1975; amd. Sec. 21, Ch. 494, L. 1975; R.C.M. 1947, 70-821; amd. Sec. 16, Ch. 68, L. 1979; amd. Sec. 21, Ch. 676, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Injunctions, Title 27, ch. 19.

75-20-409. Optional annual installments for location of facility on landowner's property. A landowner upon whose land a facility is proposed to be located shall have the option of receiving any negotiated settlement for use of his land, if and when the land is used for a facility, by easement, right-of-way, or other legal conveyance in either a lump sum or in not more than five consecutive annual installments.

History: En. Sec. 1, Ch. 71, L. 1979.

Cross-References

Servitudes and easements, Title 70, ch. 17.

75-20-410. Order not stayed by appeal — stay or suspension by court — limitations. Notwithstanding any contrary provision in the law, the pendency of an appeal from a board order does not automatically stay or suspend the operation of the order. During the pendency of the appeal, the court may upon motion by one of the parties stay or suspend, in whole or in part, the operation of the board's orders on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) No stay may be granted without notice to the parties and an opportunity to be heard by the court.

(2) No board order may be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and any other stay or suspension of a board order must specify the nature of the damage.

History: En. Sec. 24, Ch. 676, L. 1979.

Cross-References

Stay of judgment or order pending appeal, Rule 7, M.R.App.P. (see Title 25, ch. 21).

75-20-411. Surety bond — other security. If an order of the board is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the board; except that the cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, he does not forfeit bond nor is he responsible for damages caused by delay.

History: En. Sec. 25, Ch. 676, L. 1979.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Part 5

Long-Range Plans

75-20-501. Annual long-range plan submitted — contents — available to public — least-cost plan. (1) Except as provided in subsection (5), each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of planned development of utility facilities, a description of efforts by the utility or person to coordinate with other utilities and regional planning;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall be furnished to the governing body of each county in which any facility included in the plan under (2)(a) of this section is proposed to be located and made available to the public by the department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of transportation, the department of public service regulation, the department of state lands, the department of fish, wildlife, and parks, and the department of commerce. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment for the plan to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan or other integrated resource plan

required to be completed under federal rural electrification administration or other federal agency requirements in lieu of the long-range plan required in subsection (1).

(5) The provisions of subsections (1) through (4) do not apply to a public utility that submits an integrated least-cost resource plan to the public service commission pursuant to Title 69, chapter 3, part 12.

(6) A public utility that submits an integrated least-cost resource plan pursuant to Title 69, chapter 3, part 12, shall contract with the department to fund the actual and necessary costs of the department that are associated with preparing the department's comments on the public utility's plan and with obtaining other agencies' comments, as provided in 69-3-1205. If a contract is not entered into prior to the submission of the plan, the department, upon completion of its review and comment, shall bill the utility for the department's costs.

History: En. Sec. 14, Ch. 327, L. 1973; amd. Sec. 40, Ch. 213, L. 1975; amd. Sec. 14, Ch. 494, L. 1975; R.C.M. 1947, 70-814; amd. Sec. 17, Ch. 68, L. 1979; amd. Sec. 3, Ch. 553, L. 1979; amd. Sec. 22, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 116, L. 1985; amd. Sec. 6, Ch. 591, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 10, Ch. 157, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 157 in (1), at beginning, inserted exception clause; in (2)(b), near beginning after "case of", inserted "planned development of", after "coordinate" deleted "the plan", and at end, after "utilities", substituted "and regional planning" for "or persons so as to provide a coordinated regional plan for meeting the energy needs of the region"; in (4), after "work plan", inserted "or other integrated resource plan" and after "electrification" inserted "administration or other federal agency"; substituted (5) limiting applicability to least-cost resource plan for former language that read: "No person may file an application for a facility unless the facility had been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department, except for electric transmission lines of a design capacity of 230 kilovolts or less"; inserted (6) requiring the public utility to pay the Department's costs; and made minor changes in style. Amendment effective July 1, 1993.

75-20-502. Study of included facilities. If a utility or person lists and identifies a proposed facility in its plan, submitted pursuant to 75-20-501, as one on which construction is proposed to be commenced within the 5-year period following submission of the plan, the department shall commence examination and evaluation of the proposed site to determine whether construction of the proposed facility would unduly impair the environmental values in 75-20-503. This study may be continued until such time as a person files an application for a certificate under 75-20-211. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

History: En. Sec. 15, Ch. 327, L. 1973; amd. Sec. 15, Ch. 494, L. 1975; R.C.M. 1947, 70-815.

75-20-503. Environmental factors evaluated. In evaluating long-range plans, conducting 5-year site reviews, and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors, where applicable, and may by rule add to the categories of this section:

(1) energy needs:

(a) growth in demand and projections of need;

(b) availability and desirability of alternative sources of energy;

(c) availability and desirability of alternative sources of energy in lieu of the proposed facility;

(d) promotional activities of the utility which may have given rise to the need for this facility;

(e) socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;

(f) conservation activities which could reduce the need for more energy;

(g) research activities of the utility of new technology available to it which might minimize environmental impact;

(2) land use impacts:

(a) area of land required and ultimate use;

(b) consistency with areawide state and regional land use plans;

(c) consistency with existing and projected nearby land use;

(d) alternative uses of the site;

(e) impact on population already in the area, population attracted by construction or operation of the facility itself;

(f) impact of availability of energy from this facility on growth patterns and population dispersal;

(g) geologic suitability of the site or route;

(h) seismologic characteristics;

(i) construction practices;

(j) extent of erosion, scouring, wasting of land, both at site and as a result of fossil fuel demands of the facility;

(k) corridor design and construction precautions for transmission lines or aqueducts;

(l) scenic impacts;

(m) effects on natural systems, wildlife, plant life;

(n) impacts on important historic architectural, archaeological, and cultural areas and features;

(o) extent of recreation opportunities and related compatible uses;

(p) public recreation plan for the project;

(q) public facilities and accommodation;

(r) opportunities for joint use with energy-intensive industries or other activities to utilize the waste heat from facilities;

(s) opportunities for using public lands for location of facilities whenever as economically practicable as the use of private lands and compatible with the requirements of this section;

(3) water resources impacts:

(a) hydrologic studies of adequacy of water supply and impact of facility on streamflow, lakes, and reservoirs;

(b) hydrologic studies of impact of facilities on ground water;

(c) cooling system evaluation, including consideration of alternatives;

(d) inventory of effluents, including physical, chemical, biological, and radiological characteristics;

(e) hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments;

(f) relationship to water quality standards;

(g) effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses;

(h) relationship to projected uses;

(i) relationship to water rights;

(j) effects on plant and animal life, including algae, macroinvertebrates, and fish population;

(k) effects on unique or otherwise significant ecosystems, e.g., wetlands;

(l) monitoring programs;

(4) air quality impacts:

(a) meteorology—wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion;

(b) topography—factors affecting dispersion;

(c) standards in effect and projected for emissions;

(d) design capability to meet standards;

(e) emissions and controls:

(i) stack design;

(ii) particulates;

(iii) sulfur oxides;

(iv) oxides of nitrogen; and

(v) heavy metals, trace elements, radioactive materials, and other toxic substances;

(f) relationship to present and projected air quality of the area;

(g) monitoring program;

(5) solid wastes impacts:

(a) solid waste inventory;

(b) disposal program;

(c) relationship of disposal practices to environmental quality criteria;

(d) capacity of disposal sites to accept projected waste loadings;

(6) radiation impacts:

(a) land use controls over development and population;

(b) wastes and associated disposal program for solid, liquid, radioactive, and gaseous wastes;

(c) analyses and studies of the adequacy of engineering safeguards and operating procedures;

(d) monitoring—adequacy of devices and sampling techniques;

(7) noise impacts:

(a) construction period levels;

(b) operational levels;

(c) relationship of present and projected noise levels to existing and potential stricter noise standards;

(d) monitoring—adequacy of devices and methods.

History: En. Sec. 16, Ch. 327, L. 1973; amd. Sec. 16, Ch. 494, L. 1975; R.C.M. 1947, 70-816; amd. Sec. 2, Ch. 69, L. 1979; amd. Sec. 23, Ch. 676, L. 1979.

Cross-References

Criteria applicable to certificate renewal proceedings, 75-20-226, 75-20-227.

Parts 6 through 9 reserved

Part 10
Geothermal Exploration

75-20-1001. Geothermal exploration — notification of department. The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation related to the possible future development of a facility employing geothermal resources to comply with the following requirements:

(1) notify the department of the proposed action;

(2) submit to the department a description of the area involved;

(3) submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;

(4) submit to the department geological data reports at such times as may be required by the rules; and

(5) submit such other information as the board may require in the rules.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(3).

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Injury caused by geothermal exploration — Statute of Limitations, 27-2-303.

Part 11
Energy Conversion Facility
(Repealed. Sec. 28, Ch. 676, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

75-20-1101 through 75-20-1105. En. 70-825 through 70-829 by Sec. 1 through 5, Ch. 517, L. 1975; R.C.M. 1947, 70-825 through 70-829.

Part 12
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Part Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Control of radioactive substances, Title 75, ch. 3.

Montana Hazardous Waste Act, Title 75, ch. 10, part 4.

75-20-1201. Purpose — findings as to nuclear safety — reservation of nuclear facility approval powers to the people. (1) The people of Montana find that substantial public concern exists regarding nuclear reactors and other major nuclear facilities, including the following unresolved issues:

(a) the generation of waste from nuclear facilities, which remains a severe radiological hazard for many thousands of years and to which no means of containment assuring the protection of future generations exists;

(b) the spending of scarce capital to pay the rapidly increasing costs of nuclear facilities, preventing the use of that capital to finance renewable energy sources which hold more promise for supplying useful energy, providing jobs, and holding down energy costs;

(c) the liability of nuclear facilities to sudden catastrophic accidents which can affect large areas of the state, thousands of people, and countless future generations;

(d) the refusal of utilities, industry, and government to assume normal financial responsibility for compensating victims of such nuclear accidents;

(e) the impact of nuclear facilities on the proliferation of nuclear bombs and terrorism;

(f) the increasing pattern of abandonment of used nuclear facilities by their owners, resulting in radiological dangers to present and future societies as well as higher public costs for perpetual management; and

(g) the detrimental effect of the large uranium import program necessary to the expansion of nuclear power on American energy independence, defense policy, and economic well being.

(2) Therefore, the people of Montana reserve to themselves the exclusive right to determine whether major nuclear facilities are built and operated in this state.

History: En. Sec. 1, I.M. 80, app. Nov. 7, 1978.

75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

(1) "Facility", as defined in 75-20-104(10), is further defined to include any nuclear facility as defined in subsection (2)(a).

(2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

(b) Nuclear facility does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.

History: En. Sec. 2, I.M. 80, app. Nov. 7, 1978; amd. Sec. 12, Ch. 573, L. 1985.

75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility. (1) The board may not issue a certificate to construct a nuclear facility unless it finds that:

(a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and recover full and just compensation from the designers, manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no legal limits exist regarding the total compensation which may be required from the designers, manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the existence or operation of such facility;

(b) the effectiveness of all safety systems, including but not limited to the emergency core cooling systems, of such nuclear facility has been demonstrated, to the satisfaction of the board, by the comprehensive laboratory testing of substantially similar physical systems in actual operation;

(c) the radioactive materials from such nuclear facilities can be contained with no reasonable chance, as determined by the board, of intentional or unintentional escape or diversion of such materials into the natural environment in such manner as to cause substantial or long-term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the board may deem to be reasonably possible, at any time during which such materials remain a radiological hazard; and

(d) the owner of such nuclear facility has posted with the board a bond totaling not less than 30% of the total capital cost of the facility, as estimated by the board, to pay for the decommissioning of the facility and the decontamination of any area contaminated with radioactive materials due to the existence or operation of the facility in the event the owner fails to pay the full costs of such decommissioning and decontamination. Excess bond, if any, shall be refunded to the owner upon demonstration, to the satisfaction of the board, that the site and environs of the facility pose no radiological danger to present or future generations and that whatever other conditions the board may deem reasonable have been met.

(2) Nothing in this section shall be construed as relieving the owner of a nuclear facility from full financial responsibility for the decommissioning of such facility and decontamination of any area contaminated with radioactive materials as a result of the existence or operation of such facility at any time during which such materials remain a radiological hazard.

History: En. Sec. 4, I.M. 80, app. Nov. 7, 1978.

75-20-1204. Annual review of evacuation and emergency medical aid plans. (1) The governor shall annually publish, publicize, and release to the news media and to the appropriate officials of affected communities, in a manner designed to inform residents of the affected communities, the entire evacuation plan specified in the licensing of each certified nuclear facility within this state. Copies of such plan shall be made available to the public upon request at no more than the cost of reproduction.

(2) The governor shall establish procedures for annual review by state and local officials of established evacuation and emergency medical aid plans with regard for, but not limited to, such factors as the adequacy of such plans, changes in traffic patterns, population densities, the locations of schools, hospitals, and industrial developments, and other factors as requested by locally elected representatives.

History: En. Sec. 5, I.M. 80, app. Nov. 7, 1978.

75-20-1205. Emergency approval authority invalid for nuclear facilities. Notwithstanding the provisions of 75-20-304(2) and (3), the board may not waive compliance with any of the provisions of this part or 75-20-201 through 75-20-203 relating to certification of a nuclear facility.

History: En. Sec. 6, I.M. 80, app. Nov. 7, 1978; amd. Sec. 7, Ch. 312, L. 1987.

TITLE 76

LAND RESOURCES AND USE

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CHAPTER 1

PLANNING BOARDS

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Part 1

General Provisions

76-1-101. Planning boards authorized. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county or any combination thereof may create a planning board in order to promote the orderly development of its governmental units and its environs.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

Cross-References
Building regulations — appointment of zoning commission, Title 76, ch. 2, part 3.

76-1-102. Purpose. (1) It is the object of this chapter to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and of other related matters.

(5) "Mayor" means mayor of a city.

(6) "Person" means any individual, firm, or corporation.

(7) "Planning board" means a city planning board, a county planning board or a joint city-county planning board.

(8) "Plat" means a subdivision of land into lots, streets, and areas, marked upon the earth and represented on paper, and includes replats or amended plats.

(9) "Public place" means any tract owned by the state or its subdivisions.

(10) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(11) "Units of government" means any federal, state, or regional unit of government or any county, city, or town.

(12) "Utility" means any facility used in rendering service which the public has a right to demand.

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; R.C.M. 1947, 11-3803(part); amd. Sec. 1, Ch. 266, L. 1979.

76-1-104. Procedure to establish county planning board — protest. (1) Before a county planning board may be created, the board of county commissioners shall by resolution give public notice of their intent to create such planning board and of a public hearing thereon by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than 15 or more than 30 days prior to the date of hearing.

(2) A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than 60 days after such hearing, by a majority of the qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507 and outside the incorporated limits of each city and town in the county.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

Cross-References

Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.

76-1-105. Role of county in formation of city planning board. (1) Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing the county commissioners of the county in which the city is located of their intention to form a city planning board.

(2) The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and shall notify in writing the city council of its election within 30 days from receipt of notice of the city's intention to form a planning board. In the event the county commissioners so elect, the planning board to be so formed shall be a city-county planning board.

History: En. Sec. 5, Ch. 246, L. 1957; R.C.M. 1947, 11-3805.

76-1-106. Role of the planning board. (1) To assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a master plan and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may also propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands;

(d) the laying out and development of public ways and services to platted and unplatted lands.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(1), (2).

76-1-107. Role of planning board in relation to subdivisions and plats. The governing body of any city, town, or county which has formed a planning board and adopted a comprehensive plan and subdivision regulations pursuant to this chapter and chapter 3 shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

History: En. Sec. 2, Ch. 19, L. 1971; R.C.M. 1947, 11-3842.1.

76-1-108. City-county planning board as a zoning commission. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under 76-2-307.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(3).

76-1-109. Interaction of local government and city-county planning board. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board, but the governing bodies shall not be bound by such recommendations.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(4).

76-1-110. Cooperation with planning board by state and local governments. Whenever the board undertakes the preparation of a master plan, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, such information, documents, and plans as have been prepared or, upon the request of the board, shall provide such information as relates to the board's activity.

History: En. Sec. 29, Ch. 246, L. 1957; R.C.M. 1947, 11-3829.

76-1-111. Representation of county or additional cities or towns on existing boards. (1) Any city, county, or town or any combination thereof wishing to be represented upon an existing planning board may, by agreement of the governing body or bodies then represented upon the board, obtain representation thereon and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

(2) The membership as well as the jurisdictional area of any board may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

(3) Any city, county, or town which becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of such representation. The governing bodies of any city or county so being represented may levy on all property which is added to the jurisdictional area of an existing board by such representation a tax for planning board purposes under procedures set forth in Title 7, chapter 6, part 23 or part 42, whichever is applicable; provided such tax shall not exceed the maximum levy authorized in 76-1-402 through 76-1-407.

History: En. Sec. 15, Ch. 246, L. 1957; amd. Sec. 6, Ch. 273, L. 1971; R.C.M. 1947, 11-3815.

76-1-112. Joint or consolidated planning boards. (1) Any existing city, county, or city-county planning board may form a joint or consolidated planning board with any other existing city, county, or city-county planning board or with any combination of these boards.

(2) The manner of combination shall be by interlocal agreement of the cities, counties, and towns represented on the existing planning boards pursuant to Title 7, chapter 11, part 1.

(3) The interlocal agreement shall:

(a) state the name of the combined board;

(b) specify whether a joint or combined board is formed;

(c) specify the representation, means and manner of appointment, membership duties, and manner of sharing costs of the combined board which may be on any basis agreeable to the governing bodies of the cities, counties, and towns represented on the existing planning boards.

(4) If a consolidated board is formed, the existing city, county, and city-county planning boards shall be dissolved and the consolidated board shall have all of the rights, duties, powers, and obligations of the existing planning boards.

(5) If a joint board is formed, the existing planning boards shall not be dissolved and the joint board shall have such rights, duties, powers, and obligations as are set forth in the interlocal agreement.

History: En. 11-3815.1 by Sec. 1, Ch. 101, L. 1975; R.C.M. 1947, 11-3815.1.

76-1-113. Effect of chapter on natural resources. (1) Except as provided in subsection (2), nothing in this chapter may be considered to authorize an ordinance, resolution, or rule that would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under Title 76, chapter 2.

History: En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959; R.C.M. 1947, 11-3853; amd. Sec. 1, Ch. 408, L. 1991.

Part 2
Membership

76-1-201. Membership of city-county planning board. (1) Except as provided in subsection (2), a city-county planning board shall consist of not less than nine members to be appointed as follows:

(a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(c) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(e) the ninth member to be selected by the eight officers and citizen members hereinabove provided for from the members of the board of supervisors of a conservation district provided for in 76-15-311.

(2) Subsection (1)(e) does not apply if there is no member of the board of supervisors of a conservation district who is able or willing to serve on the

city-county planning board. In such case, the ninth member of the city-county planning board shall be selected by the eight officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(part); amd. Sec. 1, Ch. 192, L. 1979; amd. Sec. 1, Ch. 509, L. 1985.

76-1-202. Qualifications of citizen members of city-county planning board. (1) The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction; provided, however, that at least two of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside the city limits but within the jurisdictional area of the planning board.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)Ap. p. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; Ap. p. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; Sec. 11-3810, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3810(part), 11-3812(part), 11-3813.

76-1-203. Term of members of county and city-county planning boards. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be 2 years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for 1 or 2 years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(3).

76-1-204. Vacancies on county and city-county planning boards. (1) Vacancies occurring on the board of official members and by death or resignation of citizen members shall be filled for the unexpired term by the governing bodies having appointed them.

(2) Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners.

(3) Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor.

(4) In the event more than one city is represented on a board, the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971; R.C.M. 1947, 11-3811.

76-1-205 through 76-1-210 reserved.

76-1-211. Membership of county planning board. (1) County planning boards shall consist of not less than five members appointed by the board of county commissioners. At least one member of any county planning board existing on or formed after July 1, 1973, shall be a member of the governing board of a conservation district as provided for in chapter 15 or a state cooperative grazing district if officers of either reside in said county.

(2) In the event that any city or town subsequently becomes represented on the county planning board pursuant to 76-1-111, additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(2).

76-1-212. Citizen members of county planning board. (1) The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3812(part), 11-3813.

76-1-213 through 76-1-220 reserved.

76-1-221. Membership of city planning board. (1) A city planning board shall consist of not less than seven members to be appointed as follows:

(a) one member to be appointed by the city council from its membership;

(b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

(c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

(d) four citizen members to be appointed by the mayor, two of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be resident freeholders within the city limits.

(2) The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: (1)En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959; Sec. 11-3804, R.C.M. 1947; (2)En. Sec. 7, Ch. 246, L. 1957; Sec. 11-3807, R.C.M. 1947; R.C.M. 1947, 11-3804(part), 11-3807.

76-1-222. City council member of city planning board. (1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member shall be coextensive with the term of office to which he has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless his term is terminated as hereinafter provided.

(2) The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: **En. Sec. 6, Ch. 246, L. 1957; R.C.M. 1947, 11-3806.**

76-1-223. County representative for city planning board. As soon as a city council has enacted an ordinance creating a city planning board, the board of county commissioners of the county wherein the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. In the event of the failure of the county to so designate such member, the mayor may appoint a person of his own choosing and at his sole discretion as a representative of the county.

History: **En. Sec. 14, Ch. 246, L. 1957; R.C.M. 1947, 11-3814; amd. Sec. 2, Ch. 266, L. 1979.**

76-1-224. Citizen members of city planning board. (1) The citizen members shall:

(a) be qualified by knowledge and experience in matters pertaining to the development of the city; and

(b) hold no other office in the city government.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the city.

History: **En. Secs. 8, 13, Ch. 246, L. 1957; amd. Secs. 3, 5, Ch. 247, L. 1963; R.C.M. 1947, 11-3808, 11-3813; amd. Sec. 3, Ch. 266, L. 1979.**

Part 3

Organization and Administration

76-1-301. Planning board meetings. (1) The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October.

(2) Special meetings of the planning board may be called by the president or by two members upon written request to the secretary. The secretary shall send to all members, at least 2 days in advance of a special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting or if all members are present at the special meeting.

History: **En. Secs. 16, 17, Ch. 246, L. 1957; R.C.M. 1947, 11-3816, 11-3817.**

Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

76-1-302. Planning board officers. At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

History: **En. Sec. 21, Ch. 246, L. 1957; R.C.M. 1947, 11-3821.**

76-1-303. Offices. The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

History: **En. Sec. 23, Ch. 246, L. 1957; R.C.M. 1947, 11-3823.**

76-1-304. Quorum — official action. (1) A majority of members shall constitute a quorum.

(2) No action of the planning board is official, however, unless authorized by a majority of members of the board at a regular or properly called special meeting.

History: En. Sec. 18, Ch. 246, L. 1957; amd. Sec. 6, Ch. 247, L. 1963; R.C.M. 1947, 11-3818.

76-1-305. Administration of board. To effectuate the purpose of this chapter, the board shall have the power and duty to:

(1) exercise general supervision of and make regulations for the administration of the affairs of the board;

(2) prescribe uniform rules pertaining to investigations and hearings;

(3) keep an accurate and complete record of all departmental proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of the board;

(4) make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction;

(5) prepare, publish, and distribute reports, proposed ordinances and proposed resolutions, and other material relating to the activities authorized under this chapter.

History: En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; R.C.M. 1947, 11-3824(part).

76-1-306. Board secretary and employees — service contracts. (1) The board may appoint and prescribe the duties and fix the compensation of a secretary and such employees as are necessary for the discharge of the duties and responsibilities of the board.

(2) To effectuate the purpose of this chapter, the board shall have the power and duty to prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the board and delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.

(3) The board may make contracts for special or temporary services and any professional services.

History: (1), (3)En. Sec. 22, Ch. 246, L. 1957; Sec. 11-3822, R.C.M. 1947; (2)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; R.C.M. 1947, 11-3822, 11-3824(part).

76-1-307. Compensation and expenses of board members and employees. (1) The members of planning boards shall receive no salary for serving on the planning board but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursements and allowable expenses incurred in attending planning board meetings.

(2) When the planning board determines that it is necessary for members or employees to attend a regional or national conference or interview in another city, county, or state dealing with planning or related problems, the planning board may pay the actual expenses of the attending members or employees provided the amount has been made available in the board's appropriation.

History: (1)En. Sec. 19, Ch. 246, L. 1957; amd. Sec. 1, Ch. 291, L. 1974; Sec. 11-3819, R.C.M. 1947; (2)En. Sec. 20, Ch. 246, L. 1957; amd. Sec. 7, Ch. 247, L. 1963; Sec. 11-3820, R.C.M. 1947; R.C.M. 1947, 11-3819, 11-3820.

Cross-References

Expense allowances for state, 2-18-501 through 2-18-503.

Part 4
Financial Administration

76-1-401. Fiscal administration. (1) To effectuate the purpose of this chapter, the board shall have the power and duty to:

(a) supervise the fiscal affairs and responsibilities of the board;

(b) prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

(2) The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this chapter.

History: (1)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; (2)En. Sec. 26, Ch. 246, L. 1957; Sec. 11-3826, R.C.M. 1947; R.C.M. 1947, 11-3824(part), 11-3826.

76-1-402. Funding of board operation. (1) After a city council has by ordinance, a board of county commissioners has by ordinance and resolution, or a city council and board of county commissioners have by ordinance and resolution created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

(2) When a planning board has been created by agreement of more than one governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(1), (2).

Cross-References

County land planning assistance, 90-1-108.

76-1-403. Tax levy by county for certain county planning districts authorized. When a county planning board has been established, the board of county commissioners may create a planning district which shall include that property which lies outside the limits of the jurisdictional area as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established as well as that property which lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on all property located within such planning district a tax not to exceed the maximum levy authorized by 76-1-405 for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(5); amd. Sec. 4, Ch. 266, L. 1979.

76-1-404. Tax levy by county for city-county planning board authorized. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional areas as established pursuant to 76-1-504 through 76-1-507 which lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on all property located within such planning district a tax for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23, provided such tax shall not exceed the maximum levy authorized in 76-1-405.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(4).

76-1-405. Maximum county mill levy — authorization for levy. The tax levy for planning board purposes shall be limited as follows:

(1) A county of the first class, as defined in 7-1-2111, may levy a tax not to exceed 2 mills.

(2) A county of the second class may levy a tax not to exceed 3 mills.

(3) A county of the third class may levy a tax not to exceed 4 mills.

(4) A county of the fourth class may levy a tax not to exceed 5 mills.

(5) Counties of the fifth, sixth, and seventh classes may levy a tax not to exceed 6 mills.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part).

76-1-406. Tax levy by municipalities authorized. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town for planning board purposes, under procedures set forth in Title 7, chapter 6, part 42, provided such tax shall not exceed the maximum levy authorized in 76-1-407.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(3); amd. Sec. 5, Ch. 266, L. 1979.

76-1-407. Maximum city mill levy. The tax levy for planning board purposes shall be limited as follows:

(1) A city of the first class, as defined in 7-1-4111, may levy a tax not to exceed 2 mills.

(2) A city of the second class may levy a tax not to exceed 4 mills.

(3) A city of the third class may levy a tax not to exceed 6 mills.

(4) A town may levy a tax not to exceed 6 mills.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part).

76-1-408. Acceptance and administration of gifts and donations. (1) A city, county, or city-county planning board organized pursuant to the provisions of this chapter is hereby empowered and given the right to:

(a) accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest or any property (real, personal, or mixed) or any improved or unimproved park or playground; and

(b) utilize, hold, or dispose of the same for planning purposes not inconsistent with the provisions of this chapter.

(2) Any money so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board.

History: **En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part).**

76-1-409. Acceptance and administration of government funds and services. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities, from state or local governments or their agencies and instrumentalities, or from civic sources; may contract with respect thereto; and may provide such information and reports as may be necessary to secure such financial aid.

History: **En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part); amd. Sec. 6, Ch. 266, L. 1979.**

Cross-References

County land planning assistance, 90-1-108.

Part 5
Jurisdictional Area

76-1-501. Jurisdictional area of county planning board. The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507. Should any city or town become represented on the county planning board pursuant to 76-1-111, the jurisdictional area of the county planning board shall be extended to include that city or town.

History: **En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(1).**

76-1-502. Filing of map of jurisdictional area of county planning board — revision of boundaries. The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: **En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(2).**

76-1-503. Resolution of conflicts involving jurisdictional area of county planning boards. (1) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in 76-1-502 and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(2) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies, and a map showing the boundary lines so agreed upon shall be filed as provided in 76-1-502 and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(3), (4).

76-1-504. Jurisdictional area of city-county planning board. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

76-1-505. Extension of boundaries of city-county planning board jurisdictional area. (1) The boundaries of the jurisdictional area can be extended further than 4 ½ miles from the limits of the cities only upon petition signed by 5% or more of the resident freeholders living in excess of 4 ½ miles and not more than 12 miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits and upon presentation of said petition to the board of county commissioners.

(2) Thereafter, the board of county commissioners must by resolution set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition by publication of notice of time and place of hearing on said petition and resolution. Said notice is to be published in a newspaper published in the county not less than 10 or more than 20 days prior to the date of said hearing. Thereafter, the boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall not be adopted by the board of county commissioners if disapproved in writing by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than 12 miles beyond the limits of any city within the jurisdictional area.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

Cross-References

Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.

76-1-506. Filing of map of jurisdictional area of city-county planning board — revision of boundaries. The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(2).

76-1-507. Resolution of conflicts over jurisdictional areas of several city-county planning boards. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. A map showing the boundary lines so agreed upon and approved shall be filed as provided in 76-1-506 and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(3).

76-1-508. Planning projects outside city-county planning board jurisdictional area — broad construction. (1) Any city-county planning board organized pursuant to the provisions of this chapter is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county and outside of the jurisdictional area of said city-county planning board as defined in 76-1-504 through 76-1-507.

(2) Such authority to conduct specific planning projects outside of the jurisdictional area of the city-county planning board upon request of the board of county commissioners shall be broadly construed so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

History: En. Sec. 1, Ch. 190, L. 1965; R.C.M. 1947, 11-3830.1.

Part 6
Master Plan

Part Cross-References

Compliance with plan required for annexation, 7-2-4734(3).

76-1-601. Master plan — contents. The planning board shall prepare and propose a master plan for the jurisdictional area. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body. The plan may include:

(1) careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county;

(2) maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:

(a) history, population, and physical site conditions;

(b) land use, including the height, area, bulk, location, and use of private and public structures and premises;

(c) population densities;

(d) community centers and neighborhood units;

(e) blighted and slum areas;

(f) streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;

(g) sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;

(h) flood control and prevention;

(i) public and private utilities, including water, light, heat, communication, and other services;

(j) transportation, including rail, bus, truck, air, and water transport and their terminal facilities;

(k) local mass transit, including motor and trolley bus; street, elevated, or underground railways; and taxicabs;

(l) parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;

(m) public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;

(n) education, including location and extent of schools, colleges, and universities;

(o) land utilization, including areas for manufacturing and industrial uses, concentration of wholesale business, retail business, and other commercial uses, residential uses, and areas for mixed uses;

(p) conservation of water, soil, agricultural, and mineral resources;

(q) any other factors which are a part of the physical, economic, or social situation within the city or county;

(3) reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in subsection (2) so as to substantially accomplish the object of this chapter as set out in 76-1-101 and 76-1-102;

(4) a long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment and the keeping of such program up-to-date for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds;

(5) recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes.

History: Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831.

Cross-References

Compliance with plan required for annexation, 7-2-4734(3).

Compliance required by cemetery associations, 35-20-201.

76-1-602. Public hearing on proposed master plan. (1) Prior to the submission of the proposed master plan to the governing bodies, the board shall give notice and hold a public hearing on the plan.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957; amd. Sec. 13, Ch. 247, L. 1963; R.C.M. 1947, 11-3833.

Cross-References

Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.

76-1-603. Adoption of master plan by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed master plan and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board.

History: En. Sec. 34, Ch. 246, L. 1957; amd. Sec. 14, Ch. 247, L. 1963; R.C.M. 1947, 11-3834.

76-1-604. Adoption, revision, or rejection of master plan. (1) The governing bodies shall adopt a resolution of intention to adopt, revise, or reject such proposed plan or any of its parts.

(2) If the governing bodies adopt a resolution of intention to adopt the proposed plan or any of its parts, they may, in their discretion, submit to the qualified electors of the jurisdictional area included within the proposed plan at the next primary or general election or at a special election the referendum question of whether or not the plan should be adopted. The provisions of Title 7, chapter 5, part 1, except as in this section otherwise provided, shall apply to such referendum election.

(3) The governing bodies may adopt, revise, or repeal a master plan under this section.

(4) The qualified electors of the jurisdictional area included within the master plan may by initiative or referendum, as provided in 7-5-131 through 7-5-137, adopt, revise, or repeal a master plan under this section.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 1, Ch. 541, L. 1981.

76-1-605. Use of adopted master plan. After adoption of the master plan, the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give consideration to the general policy and pattern of development set out in the master plan in the:

(1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

(3) adoption of subdivision controls;

(4) adoption of zoning ordinances or resolutions.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part).

76-1-606. Effect of master plan on subdivisions and plats. (1) Where a master plan has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) Thereafter:

(a) a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

(b) a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat.

(3) Nothing herein contained shall be interpreted to limit the present powers of the city or county governments but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971; R.C.M. 1947, 11-3842.

CHAPTER 2

PLANNING AND ZONING

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Chapter Cross-References

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Part 1
County Planning and Zoning Commission

Part Cross-References
Inclusion of zoning district within municipal jurisdictional area, 50-60-101(9)(b).

76-2-101. Planning and zoning commission and district. (1) Whenever the public interest or convenience may require and upon petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district and to appoint a commission consisting of five members.

(2) No such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" shall mean any area that consists of not less than 40 acres.

(4) An action challenging the creation of a planning and zoning district must be commenced by October 1, 1994, or within 5 years after the date of the order by the board of county commissioners creating the district, if the district was created after October 1, 1989.

History: (1), (2)En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; Sec. 16-4101, R.C.M. 1947; (3)En. Sec. 7, Ch. 154, L. 1953; amd. Sec. 1, Ch. 229, L. 1955; Sec. 16-4107, R.C.M. 1947; R.C.M. 1947, 16-4101(part), 16-4107; (4)En. Sec. 1, Ch. 441, L. 1989.

76-2-102. Organization and operation of commission. (1) The commission is to consist of the three county commissioners, the county surveyor, and the county assessor. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses and shall be residents of the county in which they serve.

(2) The commission hereby is authorized to appoint necessary employees and fix their compensation with the approval of the board of county commissioners, to select a chairman to serve for 1 year, to appoint a secretary who shall keep permanent and complete records of its proceedings, and to adopt rules governing the transaction of its business.

(3) The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board shall be paid from a levy of not to exceed 1 mill on the taxable valuation of the real property within such district.

History: En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; R.C.M. 1947, 16-4101(part).

76-2-103. Powers of commission and employees. (1) In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this part.

(2) The planning and zoning commission and any of its members, officers, and employees in the performance of their functions may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

History: En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

76-2-104. Development pattern. (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.

(2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-105. Continuation of prior nonconforming uses. Existing nonconforming uses may be continued although not in conformity with such zoning regulations.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-106. Adoption of development district. (1) Adoption by the planning and zoning commission of the development district or any change therein may be in whole or in part but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption, a public hearing shall have been held not less than 15 days after notice thereof shall have been posted in at least three public places within the area affected.

(2) The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district shall refer expressly to the maps, charts, and descriptive matters forming the pattern or part thereof. The board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

History: En. Sec. 3, Ch. 154, L. 1953; R.C.M. 1947, 16-4103.

76-2-107. Preparation of resolutions and other materials. The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part thereof previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity thereof and including procedure for appeals from decisions made under the authority of such regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is hereby authorized to adopt such resolutions.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-108. Permits authorized. The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration, or enlargement of any building or structure otherwise subject to the provisions of this part and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

History: **En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).**

76-2-109. Effect on natural resources. No planning district or recommendations adopted under this part shall regulate lands used for grazing, horticulture, agriculture, or the growing of timber.

History: **En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).**

76-2-110. Appeal procedure. Any person aggrieved by any decision of the commission or the board of county commissioners may, within 30 days after such decision or order, appeal to the district court in the county in which the property involved is located.

History: **En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).**

76-2-111. Cooperation by public agencies with commission. All public officials, departments, and agencies having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

History: **En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).**

76-2-112. Effect on powers of incorporated communities to plan adjacent areas. The authority heretofore granted by law to the incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this part except and until the board of county commissioners having jurisdiction over such adjacent area establishes a planning commission and adopts initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

History: **En. Sec. 6, Ch. 154, L. 1953; R.C.M. 1947, 16-4106.**

Part 2

County Zoning

Part Cross-References

Inclusion of zoning district within municipal jurisdictional area, 50-60-101(9)(b).

76-2-201. County zoning authorized. For the purpose of promoting the health, safety, morals, and general welfare of the people in cities and towns and counties whose governing bodies have adopted a comprehensive development plan for jurisdictional areas pursuant to chapter 1, the boards of county commissioners in such counties are authorized to adopt zoning regulations for all or parts of such jurisdictional areas in accordance with the provisions of this part.

History: **En. Sec. 1, Ch. 246, L. 1963; R.C.M. 1947, 16-4701.**

76-2-202. Establishment of zoning districts — regulations. (1) (a) Within the unincorporated portions of a jurisdictional area which has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(b) An action challenging the creation of a zoning district must be commenced by October 1, 1994, or within 5 years after the date of the order by the board of county commissioners creating the district, if the district was created after October 1, 1989.

(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.

(5) All regulations must be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

(6) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home, as defined in 61-4-309, or a housetrailer, as defined in 61-1-501.

(7) Nothing contained in this section may be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

History: En. Sec. 3, Ch. 246, L. 1963; amd. Sec. 18, Ch. 273, L. 1971; R.C.M. 1947, 16-4703; (1)(b)En. Sec. 2, Ch. 441, L. 1989; amd. Sec. 1, Ch. 505, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 505 inserted (3) relating to rebuttable presumption concerning manufactured housing within residential zoning district; inserted (6) defining manufactured housing; inserted (7) prohibiting section being construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or ability to enter into covenants; and made minor changes in style.

76-2-203. Criteria and guidelines for zoning regulations. The zoning regulations shall be made in accordance with a comprehensive development plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such zoning regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such jurisdictional area. The zoning regulations shall, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

History: En. Sec. 4, Ch. 246, L. 1963; R.C.M. 1947, 16-4704.

76-2-204. Role of planning boards. (1) The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only.

(2) This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

History: En. Sec. 2, Ch. 246, L. 1963; amd. Sec. 17, Ch. 273, L. 1971; R.C.M. 1947, 16-4702.

76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) the time and place of the public hearing;

(d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make such revisions or amendments as it may deem proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if 40% of the freeholders within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board of county commissioners shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of 1 year.

History: En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971; R.C.M. 1947, 16-4705.

76-2-206. Interim zoning map or regulation. (1) If a county is conducting or in good faith intends to conduct studies within a reasonable time or has held or is holding a hearing for the purpose of considering a master plan or zoning regulations or an amendment, extension, or addition to either pursuant to this part, the board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning regulation, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency.

(2) Such interim resolution shall be limited to 1 year from the date it becomes effective. The board of county commissioners may extend such interim resolution for 1 year, but not more than one such extension may be made.

History: En. 16-4711 by Sec. 20, Ch. 273, L. 1971; R.C.M. 1947, 16-4711.

76-2-207. Permits authorized. The board of county commissioners may provide for the issuance of location or conformance permits and may collect a fee for each such permit. The proceeds of such fees shall be deposited in the general fund of the county.

History: En. Sec. 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4708(part).

76-2-208. Continuation of nonconforming uses. Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued although such use does not conform to the provisions of such resolution.

History: En. Sec. 9, Ch. 246, L. 1963; R.C.M. 1947, 16-4709.

76-2-209. Effect on natural resources. (1) Except as provided in 82-4-431 and 82-4-432, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under this chapter.

History: En. Sec. 10, Ch. 246, L. 1963; R.C.M. 1947, 16-4710; amd. Sec. 2, Ch. 408, L. 1991.

76-2-210. Enforcement of zoning provisions. (1) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

(2) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions.

History: En. Secs. 7, 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part), 16-4708(part).

76-2-211. Violations and penalties. A violation of this part or any resolution adopted pursuant thereto is a misdemeanor and shall be punishable by a fine not exceeding $500 or imprisonment in the county jail not exceeding 6 months or both.

History: En. Sec. 7, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part); amd. Sec. 7, Ch. 266, L. 1979.

76-2-212 through 76-2-219 reserved.

76-2-220. Zoning commission — appointment — duties. (1) For the purpose of providing an optional method of amending any zoning regulations or zoning classification, the county commissioners may appoint a zoning commission to recommend amendments to the zoning regulations and classifications. Such a zoning commission must be composed of at least five citizen members appointed at large from the zoning district. The county commissioners may adopt bylaws for the zoning commission pertaining to the qualifications of the members and such other matters as the commissioners consider necessary.

(2) If a commission is appointed, it shall hold a public hearing to receive relevant testimony. The hearing, which may be held jointly with the hearing by the county commissioners, must be upon at least 15 days' notice of the time and place of the hearing and must be published in the contracted newspaper provided for in 7-5-2411 or a newspaper of general circulation in the county. Recommendations of the zoning commission must be submitted to the county commissioners.

History: En. Sec. 1, Ch. 462, L. 1981.

76-2-221. Board of adjustment. (1) The board of county commissioners shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this part.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this part. Meetings of the board of adjustment shall be held at the call of the chairman and at such times

as the board may determine. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses.

History: **En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).**

76-2-222. Membership and term of board members — vacancies. (1) Except as provided in subsection (3), the board of adjustment shall consist of five members, each to be appointed for a term of 2 years and removable for cause by the board of county commissioners upon written charges and after public hearing. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of 76-2-321 through 76-2-328.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(3) Within 30 days after January 1, 1988, the board of county commissioners shall designate two members of the board of adjustment whose terms must end in 1988 and three members whose terms must end in 1989. Subsequent appointments must be made for a term of 2 years.

History: **En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(1); amd. Sec. 1, Ch. 47, L. 1987.**

76-2-223. Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any resolution adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution;

(c) to authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

History: **En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(5), (6).**

76-2-224. Vote needed for board action. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution; or to effect any variation in such resolution.

History: **En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(7).**

76-2-225. Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History: **En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).**

Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

76-2-226. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

(2) The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

(5) Upon the hearing, any party may appear in person or by his attorney.

History: **En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(3), (4).**

76-2-227. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the county may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may (upon application, on notice to the board, and on due cause shown) grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient

to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(3) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(8) thru (11).

76-2-228. Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(12).

Part 3

Municipal Zoning

76-2-301. Municipal zoning authorized. For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

History: En. Sec. 1, Ch. 136, L. 1929; re-en. Sec. 5305.1, R.C.M. 1935; R.C.M. 1947, 11-2701.

Cross-References

Incorporation of technical codes by reference, 7-5-4202.

76-2-302. Zoning districts. (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home, as defined in 61-4-309, or a housetrailer, as defined in 61-1-501.

(5) Nothing contained in this section may be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(1); amd. Sec. 2, Ch. 505, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 505 inserted (3) relating to rebuttable presumption concerning manufactured housing within residential zoning district; inserted (4) defining manufactured housing; inserted (5) prohibiting section being construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or ability to enter into covenants; and made minor changes in style.

76-2-303. Procedure to administer zoning laws — hearing and notice. (1) The city or town council or other legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced and from time to time amended, supplemented, or changed.

(2) However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality.

History: En. Sec. 4, Ch. 136, L. 1929; re-en. Sec. 5305.4, R.C.M. 1935; R.C.M. 1947, 11-2704.

Cross-References

Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.

76-2-304. Purposes of zoning. (1) Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

History: En. Sec. 3, Ch. 136, L. 1929; re-en. Sec. 5305.3, R.C.M. 1935; R.C.M. 1947, 11-2703.

76-2-305. Alteration of zoning regulations — protest. (1) Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. The provisions of 76-2-303 relative to public hearings and official notice shall apply equally to all changes or amendments.

(2) In case, however, of a protest against such change signed by the owners of 20% or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending 150 feet therefrom or of those adjacent on either side thereof within the same block or of those directly opposite thereof extending 150 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city or town council or legislative body of such municipality.

History: En. Sec. 5, Ch. 136, L. 1929; re-en. Sec. 5305.5, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1969; R.C.M. 1947, 11-2705.

76-2-306. Interim zoning ordinances. (1) The city or town council or other legislative body of such municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required preliminary to the adoption of a zoning ordinance, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time.

(2) Such interim ordinance shall only be applicable within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and shall take effect upon passage; provided, however, a hearing is first held upon notice reasonably designed to inform all affected parties and in no event shall notice be less than publication in a newspaper of general circulation at least 7 days before the hearing.

(3) Such interim ordinance shall be of no further force and effect 6 months from the date of adoption thereof. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the legislative body may extend such interim ordinance for 1 year. Any such extension shall require a two-thirds vote for passage and shall become effective upon passage. Not more than two such extensions may be adopted.

History: En. 11-2711 by Sec. 1, Ch. 488, L. 1975; R.C.M. 1947, 11-2711.

76-2-307. Zoning commission. In order to avail itself of the powers conferred by this part, except 76-2-306, the city or town council or other legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

History: En. Sec. 6, Ch. 136, L. 1929; re-en. Sec. 5305.6, R.C.M. 1935; R.C.M. 1947, 11-2706.

Cross-References

When Zoning Commission to act as Airport Zoning Commission, 67-6-202.

City-County Planning Boards, Title 76, ch. 1.

76-2-308. Enforcement of zoning regulations and ordinances. (1) The city or town council or other legislative body may provide by ordinance for the enforcement of this part and of any regulation or ordinance made thereunder.

(2) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

History: En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 8, Ch. 266, L. 1979.

76-2-309. Conflict with other laws. (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part shall govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces; require a lower height of building or a less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required by the regulations made under authority of this part, the provisions of such statute or local ordinance or regulation shall govern.

History: En. Sec. 9, Ch. 136, L. 1929; re-en. Sec. 5305.9, R.C.M. 1935; R.C.M. 1947, 11-2709.

76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries. (1) The local city or town council or other legislative body which has adopted a master plan pursuant to chapter 1 may extend the application of its zoning or subdivision regulations, or both, beyond its limits in any direction but not in a county which has adopted such regulations within the contemplated area.

(2) (a) A city of the first class as defined in 7-1-4111 may not extend the application of its zoning or subdivision regulations, or both, more than 3 miles beyond its limits, a city of the second class may not so extend more than 2 miles beyond its limits, and a city or town of the third class may not so extend more than 1 mile beyond its limits.

(b) Where two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by this section, 76-2-302, and 76-2-311, then the extension of zoning or subdivision regulations, or both, by these cities shall terminate at a boundary line agreed upon by the cities so concerned.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-311. Administration of regulations in extended area. (1) Any city or town council or other legislative body may thereafter enforce such regulations in the area to the same extent, as if such property were situated within its corporate limits, until the county board adopts a master plan pursuant to chapter 1 and accompanying zoning or subdivision resolutions, or both, which include the area.

(2) As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two representatives from the unincorporated area which is to be affected. These representatives shall be appointed by the board of county commissioners. Such representation, however, shall cease when the county board adopts a master plan pursuant to chapter 1 and accompanying zoning or subdivision resolutions, or both, which include the area.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-312. Exclusion for commission-manager plan municipalities. A city or town which has as its plan of government the commission-manager plan shall be excluded from the provisions of 76-2-310 and 76-2-311 which define extraterritorial authority to review proposed subdivisions.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-313. Renumbered 76-2-411 by Code Commissioner, 1983.

76-2-314. Renumbered 76-2-412 by Code Commissioner, 1983.

76-2-315. Violations and penalties. (1) A violation of this part or of such ordinance or regulation made pursuant to 76-2-308(1) is a misdemeanor, and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both.

(2) It is also empowered to provide civil penalties for such violation.

History: En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 9, Ch. 266, L. 1979.

76-2-316 through 76-2-320 reserved.

76-2-321. Board of adjustment. (1) Such city or town council or other legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules therein contained.

(2) An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council or other legislative body reserves to itself the power to

make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this part.

(3) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this part. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).

76-2-322. Membership and term of board members — vacancies. (1) The board of adjustment shall consist of not less than five or more than seven members to be appointed for a term to be specified by the city or town council or other legislative body or, if no term is specified, then for a term of 3 years. A member is removable for cause by the appointing authority upon written charges and after public hearing.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(1); amd. Sec. 1, Ch. 67, L. 1985; amd. Sec. 1, Ch. 110, L. 1987.

76-2-323. Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any ordinance adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance;

(c) to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, such board may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(5), (6).

Cross-References

Application of Montana Rules of Civil Procedure to this section, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

76-2-324. Vote needed for board action. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance; or to effect any variation in such ordinance.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(7).

76-2-325. Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).

Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

76-2-326. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

(2) The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

(5) Upon the hearing any party may appear in person or by attorney.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(3), (4).

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

76-2-327. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may (on application, on notice to the board, and on due cause shown) grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(3) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(8) thru (11).

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

76-2-328. Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(12).

Part 4

Application to Governmental Agencies Group and Foster Homes

76-2-401. Definitions. As used in 76-2-402, the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

History: En. Sec. 1, Ch. 397, L. 1981.

76-2-402. Local zoning regulations — application to agencies. Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.

(1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.

(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

History: En. Sec. 2, Ch. 397, L. 1981.

76-2-403 through 76-2-410 reserved.

76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons which does not provide skilled or intermediate nursing care;

(2) a youth foster home or youth group home as defined in 41-3-1102;

(3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home.

History: En. Sec. 1, Ch. 350, L. 1973; amd. Sec. 1, Ch. 129, L. 1974; amd. Sec. 6, Ch. 364, L. 1975; R.C.M. 1947, 11-2702.1; MCA 1981, 76-2-313; redes. 76-2-411 by Code Commissioner, 1983; amd. Sec. 28, Ch. 465, L. 1983; amd. Sec. 1, Ch. 309, L. 1985; amd. Sec. 9, Ch. 514, L. 1987.

76-2-412. Relationship of foster homes, youth group homes, community residential facilities, and day-care homes to zoning. (1) A foster or youth group home operated under the provisions of 41-3-1141 through 41-3-1143 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of family services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department or any other agency of the state or a political subdivision thereof which is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight or fewer persons or to a day-care home serving 12 or fewer children.

(4) Nothing in this section shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1), provided such home is licensed by the department of health and environmental sciences and the department of family services. No city or county may require a conditional use permit in order to maintain a day-care home registered by the department of family services.

History: En. Sec. 2, Ch. 350, L. 1973; amd. Sec. 2, Ch. 129, L. 1974; R.C.M. 1947, 11-2702.2; MCA 1981, 76-2-314; redes. 76-2-412 by Code Commissioner, 1983; amd. Sec. 29, Ch. 465, L. 1983; amd. Sec. 1, Ch. 181, L. 1987.

CHAPTER 3

LOCAL REGULATION OF SUBDIVISIONS

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76-3-103. Definitions.
76-3-104. What constitutes subdivision.
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Part 3 — Land Transfers

76-3-301. General restriction on transfer of title to subdivided lands.
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Municipal subdivisions required to conform to subdivision laws, 7-3-4445.

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Conservation easements preventing subdivision of land, 76-6-203.

Water use — ground water, Title 85, ch. 2, part 5.

Part 1
General Provisions

76-3-101. Short title. This chapter may be cited as the "Montana Subdivision and Platting Act".

History: En. Sec. 1, Ch. 500, L. 1973; R.C.M. 1947, 11-3859.

76-3-102. Statement of purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey.

History: En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977; R.C.M. 1947, 11-3860; amd. Sec. 1, Ch. 272, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 272 after "natural environment" deleted "to require that whenever necessary, the appropriate approval of subdivisions be contingent upon a written finding of public interest by the governing body". Amendment effective April 6, 1993.

Applicability: Section 7(1), Ch. 272, L. 1993, provided that this section applies "to all subdivision applications filed after passage and approval of [this act]". Approved April 6, 1993.

76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are

incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

(4) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(5) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant thereto.

(6) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(7) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(8) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that comprise a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(9) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(10) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(11) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

(12) "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

(13) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(14) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

(15) "Tract of record" means a parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of

land, using documents on file in the records of the county clerk and recorder's office.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, C 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 140, Ch. 370, L. 1987; amd. Sec. 2, Ch. 272, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 272 deleted definition of occasional sale; in definition of subdivision substituted "parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section" for "parcels containing less than 20 acres"; inserted definition of tract of record; and made minor changes in style. Amendment effective April 6, 1993.

Applicability: Section 7(1), Ch. 272, L. 1993, provided that this section applies "to all subdivision applications filed after passage and approval of [this act]". Approved April 6, 1993.

Cross-References

Conservation easements preventing subdivision of land, 76-6-203.

76-3-104. What constitutes subdivision. A subdivision comprises only those parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels have been segregated from the original tract. The subdivision plat must show all the parcels whether contiguous or not.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 3, Ch. 272, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 272 in first sentence changed description of subdivision from "parcels less than 20 acres" to "parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section"; and made minor changes in style. Amendment effective April 6, 1993.

Applicability: Section 7(1), Ch. 272, L. 1993, provided that this section applies "to all subdivision applications filed after passage and approval of [this act]". Approved April 6, 1993.

76-3-105. Violations. Any person who violates any provision of this chapter or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than $100 or more than $500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

History: En. Sec. 18, Ch. 500, L. 1973; amd. Sec. 2, Ch. 553, L. 1977; R.C.M. 1947, 11-3876.

Part 2

Miscellaneous Exemptions

76-3-201. Exemption for certain divisions of land. Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter shall not apply to any division of land which:

(1) is created by order of any court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (Title 70, chapter 30);

(2) is created to provide security for construction mortgages, liens, or trust indentures;

(3) creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(4) creates cemetery lots;

(5) is created by the reservation of a life estate;

(6) is created by lease or rental for farming and agricultural purposes.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(9).

76-3-202. Exemption for structures on complying subdivided lands. Where required by this chapter, when the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 10, Ch. 266, L. 1979.

Cross-References

Unit Ownership Act, Title 70, ch. 23.

76-3-203. Exemption for certain condominiums. Condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part).

Cross-References

Unit Ownership Act, Title 70, ch. 23.

76-3-204. Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(10); amd. Sec. 1, Ch. 500, L. 1985.

76-3-205. Exemption for state-owned lands — exception. The provisions of this chapter shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(5).

76-3-206. Exemption for conveyances executed prior to July 1, 1974. This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(part).

76-3-207. Subdivisions exempted from review but subject to survey requirements — exceptions. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body, and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) A division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(6); amd. Sec. 1, Ch. 379, L. 1985; amd. Sec. 1, Ch. 569, L. 1989; amd. Sec. 4, Ch. 272, L. 1993; amd. Sec. 3, Ch. 366, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 272 in (1)(b) substituted "a single gift or sale in each county to each member" for "a gift or sale to any member"; deleted former (1)(d) that read: "(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale"; and made minor changes in style. Amendment effective April 6, 1993.

Chapter 366 in (3) substituted "certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid" for "certified that no real property taxes assessed and levied on the land to be divided are delinquent"; and made minor changes in style.

Applicability: Section 7(1), Ch. 272, L. 1993, provided that this section applies "to all subdivision applications filed after passage and approval of [this act]". Approved April 6, 1993.

Cross-References

County taxation, Title 7, ch. 6, part 25.

Property tax levies, Title 15, ch. 10.

76-3-208. Subdivisions exempted from surveying and filing requirements but subject to review provisions. Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this chapter but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(7).

76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of this chapter. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(4).

76-3-210. Subdivisions exempted from requirement of an environmental assessment. (1) Subdivisions totally within a master planning area adopted pursuant to chapter 1 wherein zoning regulations pursuant to part 3 of chapter 2 or 76-2-201 and a long-range development program of public works' projects pursuant to 76-1-601 have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment.

(2) (a) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to chapter 1 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than 10 parcels and less than 20 acres, a planning board established pursuant to chapter 1 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment.

(b) When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review.

(c) Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this subsection.

History: (1)En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; Sec. 11-3862, R.C.M. 1947; (2)En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; Sec. 11-3863, R.C.M. 1947; R.C.M. 1947, 11-3862(8), 11-3863(3.1).

Part 3

Land Transfers

76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-207(1).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of such action shall be imposed against the party not prevailing.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 633, L. 1979.

76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements. (1) Except as provided in subsection (2), the county clerk and recorder of any county may not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(2) Subsection (1) does not apply when the parcel or tract to be transferred was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by documents which, if recorded, would otherwise satisfy the requirements of this subsection. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973.

(3) The reference or documents required in subsection (2) do not constitute a legal description of the property and may not be substituted for a legal description of the property.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(3); amd. Sec. 1, Ch. 268, L. 1987.

76-3-303. Contract for deed permitted if buyer protected. Notwithstanding the provisions of 76-3-301, after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) that under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the state of Montana;

(2) that under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) that the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments he has made under the contract;

(4) that the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(5) that the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner.".

History: **En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(4); amd. Sec. 2, Ch. 379, L. 1985.**

Cross-References

County taxation, Title 7, ch. 6, part 25.

Property tax levies, Title 15, ch. 10.

76-3-304. Effect of recording complying plat. The recording of any plat made in compliance with the provisions of this chapter shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

History: **En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(3).**

76-3-305. Vacation of plats — utility easements. (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, subsections (1) and (2) of 7-14-2616, 7-14-2617, subsections (1) and (2) of 7-14-4114, and 7-14-4115, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners of the properties within the platted area adjacent to such vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

History: **En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(1).**

76-3-306. Covenants run with the land. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

History: **En. Sec. 11, Ch. 500, L. 1973; R.C.M. 1947, 11-3869.**

76-3-307. Donations or grants to public considered a grant to donee. Every donation or grant to the public or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.

History: **En. Sec. 13, Ch. 500, L. 1973; R.C.M. 1947, 11-3871.**

Part 4

Survey Requirements

Part Cross-References

Board of Professional Engineers and Professional Land Surveyors — licensing, Title 37, ch. 67.

76-3-401. Survey requirements for lands other than subdivisions. All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of 76-3-406.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(1); amd. Sec. 2, Ch. 136, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 136 inserted second sentence requiring surveys to comply with 76-3-406. Amendment effective March 19, 1993.

76-3-402. Survey and platting requirements for subdivided lands. (1) Every subdivision of land after June 30, 1973, must be surveyed and platted in conformance with this chapter, including the requirements of 76-3-406, by or under the supervision of a registered land surveyor.

(2) Subdivision plats must be prepared and filed in accordance with this chapter and regulations adopted pursuant to this chapter.

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners must be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with this chapter and regulations adopted pursuant to this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(2); amd. Sec. 3, Ch. 136, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 136 near middle of (1), after "chapter", inserted "including the requirements of 76-3-406"; and made minor changes in style. Amendment effective March 19, 1993.

76-3-403. Monumentation. (1) The department of commerce shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(11), (12); amd. Sec. 6, Ch. 274, L. 1981.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

76-3-404. Certificate of survey. (1) Within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of such map without trigonometric calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this chapter.

History: En. Sec. 14, Ch. 500, L. 1973; R.C.M. 1947, 11-3872; amd. Sec. 2, Ch. 633, L. 1979.

76-3-405. Administration of oaths by registered land surveyor. (1) Every registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

(2) A record of oaths shall be preserved as part of the field notes of the survey and noted on the certificate of survey filed under 76-3-404.

History: En. Sec. 17, Ch. 500, L. 1973; R.C.M. 1947, 11-3875; amd. Sec. 11, Ch. 266, L. 1979.

76-3-406. Surveys affecting irrigation districts — additional survey requirements. (1) (a) A surveyor who completes a survey identified in subsection (2) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than 1 section shall note on the survey the acreage of the farm unit or created parcel in each section.

(b) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the purpose of the survey.

(2) The requirements of subsection (1) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:

(a) traversed by a canal or ditch owned by an irrigation district; or

(b) included in an irrigation district.

(3) For purposes of this section, “irrigation district” means a district established pursuant to Title 85, chapter 7.

History: En. Sec. 1, Ch. 136, L. 1993.

Compiler’s Comments

Effective Date: Section 6, Ch. 136, L. 1993, provided: “[This act] is effective on passage and approval.” Approved March 19, 1993.

Part 5
Local Regulations

76-3-501. Local subdivision regulations. (1) Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 1, Ch. 378, L. 1985.

76-3-502. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 6, Ch. 274, L. 1981.

76-3-503. Hearing on proposed regulations. Before the governing body adopts subdivision regulations pursuant to 76-3-501, it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part).

76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas which, because of natural or man-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) water supply and sewage and solid waste disposal which, at a minimum, meet the regulations adopted by the department of health and environmental sciences under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981.

76-3-505. Provision for summary review of subdivisions. Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds, and which have been approved by the department of health and environmental sciences where such approval is required by part 1 of chapter 4; provided that reasonable local regulations may contain additional requirements for summary approval.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(5); amd. Sec. 1, Ch. 579, L. 1985; amd. Sec. 1, Ch. 256, L. 1987.

76-3-506. Provision for granting variances. Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(6).

76-3-507. Provision for bonding requirements to insure construction of public improvements. Local regulations may provide that, in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(7).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

76-3-508. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(8).

Part 6

Local Review Procedure

76-3-601. Submission of preliminary plat for review. (1) Except where a plat is eligible for summary approval, the subdivider shall present to the governing body or the agent or agency designated thereby the preliminary plat of the proposed subdivision for local review. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat shall be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) This section and 76-3-604, 76-3-605, and 76-3-608 through 76-3-610 do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 89, L. 1981.

76-3-602. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats.

History: En. Sec. 10, Ch. 500, L. 1973; R.C.M. 1947, 11-3868.

76-3-603. Contents of environmental assessment. Where required, the environmental assessment shall accompany the preliminary plat and shall include:

(1) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available ground water

information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(2) maps and tables showing soil types in the several parts of the proposed subdivision and their suitability for any proposed developments in those several parts;

(3) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection;

(4) such additional relevant and reasonable information as may be required by the governing body.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(4); amd. Sec. 2, Ch. 236, L. 1981.

76-3-604. Review of preliminary plat. (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to chapter 1, to the provisions of this chapter, and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within 60 days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body rejects or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part).

76-3-605. Hearing on preliminary plat. (1) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible.

(3) Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 2, Ch. 89, L. 1981; amd. Sec. 21, Ch. 526, L. 1983.

76-3-606. Dedication of land to public — cash donations. (1) A plat of a residential subdivision shall show that one-ninth of the combined area of lots 5 acres or less in size and one-twelfth of the combined area of lots greater than 5 acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than 10 acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) The park dedication and cash in lieu requirements of subsections (1) and (2) do not apply to any division that creates only one additional lot.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(1), (2); amd. Sec. 1, Ch. 703, L. 1979.

Cross-References

Sale, lease, or exchange of dedicated park lands, 7-16-2324.

76-3-607. Waiver of land dedication and cash donation requirements. (1) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(2) If a tract of land is being developed under single ownership as a part of an overall plan and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of 76-3-606 for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(3) The local governing body may waive dedication and cash donation requirements:

(a) where all of the parcels in a subdivision are 5 acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by mutual consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than 5 acres and that all parcels in the subdivision will be used for single family dwellings;

(b) when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds, and the area of land to be deeded to the association shall equal the amount that would otherwise have been dedicated to public use;

(c) for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision for the common use of the residents of the subdivision, and the area of land to be reserved for this purpose shall equal the amount that would otherwise have been dedicated to the public.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(3) thru (7).

Cross-References

Sale, lease, or exchange of dedicated park lands, 7-16-2324.

76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the subdivision meets the requirements of this chapter.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) the effect on agriculture, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(4); amd. Sec. 5, Ch. 272, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 272 in (1), before "environmental assessment", inserted "applicable" and at end substituted "meets the requirements of this chapter" for "would be in the public interest. The governing body shall disapprove any subdivision which it finds not to be in the public interest"; in (2), at beginning, deleted "To determine whether the proposed subdivision would be in the public interest" and at end substituted reference to the criteria in subsection (3) for specific criteria relating to the basis of the need for the subdivision, public opinion, and effects on agriculture, local services, taxes, the environment, wildlife and its habitat, and public health and safety; inserted (3) stating criteria that a subdivision proposal must be reviewed for; and made minor changes in style. Amendment effective April 6, 1993.

Applicability: Section 7(2), Ch. 272, L. 1993, provided that this section "applies to all

subdivision applications filed after September
30, 1993".

76-3-609. Review procedure for minor subdivisions. Subdivisions containing five or fewer parcels where proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:

(1) The governing body must approve, conditionally approve, or disapprove the first such subdivision from a tract of record within 35 days of the submission of an application for approval thereof.

(2) The governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.

(3) The requirements for holding a public hearing and preparing an environmental assessment shall not apply to the first such subdivision created from a tract of record.

(4) Subsequent subdivisions from a tract of record shall be reviewed under 76-3-505 and regulations adopted pursuant to that section.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(6); amd. Sec. 2, Ch. 579, L. 1985; amd. Sec. 2, Ch. 256, L. 1987.

76-3-610. Effect of approval of preliminary plat. (1) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within the original or extended approval period as provided in subsection (1).

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 223, L. 1981; amd. Sec. 1, Ch. 190, L. 1983.

76-3-611. Review of final plat. (1) The governing body shall examine every final subdivision plat and shall approve it when and only when:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant thereto; and

(b) the county treasurer has certified that no real property taxes assessed and levied on the land to be subdivided are delinquent.

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions set forth by or pursuant to this chapter, the examining

land surveyor shall so certify in a printed or stamped certificate on the plat or certificate of survey. Such certificate shall be signed by him.

(b) No land surveyor shall act as an examining land surveyor in regard to a plat or certificate of survey in which he has a financial or personal interest.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 273, L. 1981.

76-3-612. Abstract of title required for review process. (1) The subdivider shall submit with the final plat a certificate of a title abstracter showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

History: En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974; R.C.M. 1947, 11-3865; amd. Sec. 186, Ch. 575, L. 1981.

76-3-613. Index of plats to be kept by county clerk and recorder. (1) The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey.

(2) This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

History: En. Sec. 15, Ch. 500, L. 1973; R.C.M. 1947, 11-3873.

76-3-614. Correction of recorded plat. When a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

History: En. Sec. 16, Ch. 500, L. 1973; R.C.M. 1947, 11-3874.

CHAPTER 4

STATE REGULATION OF SUBDIVISIONS

Part 1 — Sanitation in Subdivisions

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Part 1
Sanitation in Subdivisions

Part Cross-References

Solid waste disposal exception, 75-10-214.

Water use — ground water, Title 85, ch. 2, part 5.

76-4-101. Public policy. It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation, and wildlife.

History: En. Sec. 148, Ch. 197, L. 1967; amd. Sec. 1, Ch. 509, L. 1973; R.C.M. 1947, 69-5001.

76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of health and environmental sciences.

(2) "Department" means department of health and environmental sciences.

(3) "Extension of public sewage disposal system" means a sewer line that connects two or more sewer service lines to a sewer main.

(4) "Extension of public water supply system" means a water line that connects two or more water service lines to a water main.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(6) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(7) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(8) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(9) "Reviewing authority" means the department or a local department or board of health certified to conduct review under 76-4-104.

(10) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(11) "Sewer service line" means a sewer line that connects a single building or living unit to a public sewer system or extension of such a system.

(12) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(13) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes.

(14) "Water service line" means a water line that connects a single building or living unit to a public water system or extension of such a system.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 1, Ch. 490, L. 1985; amd. Sec. 1, Ch. 592, L. 1985.

76-4-103. What constitutes subdivision. A subdivision shall comprise only those parcels of less than 20 acres which have been created by a division of land, and the plat thereof shall show all such parcels, whether contiguous or not. The rental or lease of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 2, Ch. 592, L. 1985.

76-4-104. Rules for administration and enforcement. (1) The department shall adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall provide for the review of the following divisions of land by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to review these divisions of land:

(a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual onsite water and sewage disposal facilities; and

(b) divisions of land proposed to connect to existing municipal water and waste water systems previously approved by the department, if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the divisions of land described in subsection (3).

(5) The department shall review those divisions of land described in subsection (3) if:

(a) a proposed division of land lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules shall further provide for:

(a) the furnishing to the reviewing authority of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

(7) If the reviewing authority is a local department or board of health, it shall, upon approval of a division of land under this part, notify the department of the approval and submit to the department a copy of the approval statement.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect at the time plans and specifications are submitted to the department, except in cases where current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time such lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality will apply.

History: En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(part); amd. Sec. 2, Ch. 378, L. 1985; amd. Sec. 2, Ch. 490, L. 1985.

76-4-105. Lot fees — subdivision program funding. (1) The department shall adopt rules setting forth fees that do not exceed actual costs to the department in reviewing plats and subdivisions. The rules must provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the state special revenue fund or, if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority's jurisdiction. The fees must be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees to the local governing body, as provided in 76-4-128.

(3) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.

(4) Fees collected by the department under this section must be deposited in the account in the state special revenue fund provided for in 76-4-132.

History: Ap. p. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; Sec. 69-5005, R.C.M. 1947; Ap. p. Sec. 150, Ch. 197, L. 1967; amd. Sec.4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(part), 69-5005(part); amd. Sec. 1, Ch. 553, L. 1981; amd. Sec. 33, Ch. 281, L. 1983; amd. Sec. 1, Ch. 696, L. 1983; amd. Sec. 3, Ch. 490, L. 1985; amd. Sec. 3, Ch. 592, L. 1985; amd. Sec. 1, Ch. 708, L. 1985; (5)En. Sec. 2, Ch. 708, L. 1985; amd. Sec. 9, Ch. 645, L. 1991; amd. Sec. 1, Ch. 514, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 514 in (1), in second sentence before "fund", substituted "special revenue" for "general"; in (2), after "fees", substituted "to" for "between" and after "body" deleted "and the state general fund" and deleted former second sentence that read: "When a subdivision is reviewed under the provisions of 76-4-124, the local governing body shall, within 20 days after receiving preliminary plat approval under the Montana Subdivision and Platting Act, distribute the lot fees according to the fee schedule adopted under this section"; deleted former (3) that read: "When a local department or board of health conducts a review under the provisions of 76-4-104, it shall submit to the department, along with its approval statement, a fee of $5 per reviewed lot, for purposes of offsetting costs incurred in providing certification to a local reviewing authority and other administrative costs"; inserted (4) requiring fees to be deposited in state special revenue fund; deleted (5) that read: "(5) Costs of implementing this part must be paid from the state general fund as provided by legislative appropriation"; and made minor changes in style. Amendment effective July 1, 1993.

Applicability: Section 4, Ch. 514, L. 1993, provided: "[This act] applies to all lot fees received by the department of health and environmental sciences on or after July 1, 1993."

76-4-106. Cooperation with other governmental agencies. (1) The reviewing authority may require the use of records of all state, county, and municipal agencies and may seek the assistance of those agencies.

(2) State, county, and municipal officers and employees, including local health officers and sanitarians, shall cooperate with the reviewing authority in furthering the purposes of this part so far as is practical and consistent with their own duties.

(3) A local reviewing authority without a registered sanitarian or a registered professional engineer to conduct a review under this part may contract with another local reviewing authority for the services of its registered sanitarian or registered professional engineer to conduct the review.

History: En. Sec. 8, Ch. 509, L. 1973; R.C.M. 1947, 69-5009; amd. Sec. 4, Ch. 490, L. 1985.

76-4-107. Authority to inspect and monitor — certification. (1) In order to carry out the objectives of this part, to monitor the installation of sewage disposal and water supply systems, and to prevent the occurrence of water pollution problems associated with subdivision development, the reviewing authority whenever any water supply or sewage disposal system is proposed or has been constructed may:

(a) enter upon any public or private property, at reasonable times and after presentation of appropriate credentials by an authorized representative of the reviewing authority, to inspect such systems in order to assure that the plans and specifications approved for the system have been adhered to and that the provisions of this part, rules, or orders are being satisfied;

(b) require as a condition of approval that records concerning the operation of a sewage disposal or water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of data related to water quality.

(2) The reviewing authority shall require certification from a registered professional engineer that a public water supply system or a public sewage disposal system has been constructed according to approved specifications.

History: En. 69-5010 by Sec. 1, Ch. 557, L. 1977; R.C.M. 1947, 69-5010; amd. Sec. 5, Ch. 490, L. 1985; amd. Sec. 1, Ch. 294, L. 1987.

76-4-108. Enforcement. (1) If the reviewing authority has reason to believe that a violation of this part or a rule made under it has occurred, it may have written notice served personally or by mail to the last-known address of the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. For the purpose of this part, service by mail is complete on the date of mailing. The alleged violator may, no later than 30 days after service of a notice under this section, request a hearing before the reviewing authority or the board. If a request is filed, a hearing shall be held within a reasonable time.

(2) In addition to or instead of issuing an order, the reviewing authority may initiate appropriate action to compel compliance with this part.

(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.

(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority shall accept legal responsibility for its actions under this part.

(5) If a violation of this part is found to exist, a reviewing authority may revoke a certificate of approval and reimpose sanitary restrictions on a subdivision, following a hearing before the reviewing authority under this section.

History: En. Sec. 6, Ch. 509, L. 1973; R.C.M. 1947, 69-5007; amd. Sec. 6, Ch. 490, L. 1985; (5)En. Sec. 16, Ch. 490, L. 1985.

76-4-109. Penalties. (1) A person violating any provision of this part, except 76-4-122(1), or any rule or order issued under this part is guilty of an offense and subject to a fine of not to exceed $1,000.

(2) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule or order issued under this part is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies.

History: En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part); amd. Sec. 7, Ch. 490, L. 1985.

Cross-References

Misdemeanor defined, 45-2-101.

76-4-110. Additional remedies available. This part does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this part or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of his rights in equity or under the common law or statutory law.

History: En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part).

76-4-111. Exemption for certain condominiums and subdivisions. (1) Condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units for rental or lease, the construction of the same or a fewer number of condominium units on that parcel is not subject to the provisions of this part, provided that no new extension of a public water supply system or a public sewage disposal system is required as defined in this part.

(3) Subdivisions located within master planning areas and first- or second-class municipalities that will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste are not subject to the provisions of this part; except that, if the municipal facilities for water supply or sewage disposal to serve the subdivision constitute either an extension of a public water supply system or a public sewage disposal system, the subdivision must be reviewed in accordance with the provisions of 76-4-105, 76-4-124, and 76-4-127.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 4, Ch. 592, L. 1985; (3)En. Sec. 9, Ch. 592, L. 1985.

Cross-References

Unit Ownership Act, Title 70, ch. 23.

76-4-112 through 76-4-120 reserved.

76-4-121. Restrictions on subdivision activities. Until the local governing body has certified that a subdivision is to be provided with municipal facilities for a supply of water and disposal of sewage and solid waste or that the reviewing authority has indicated that the subdivision is subject to no restrictions, a person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(4); amd. Sec. 8, Ch. 490, L. 1985.

76-4-122. Filing or recording of noncomplying map or plat prohibited. (1) The county clerk and recorder shall not file or record any map or plat showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat for filing until one of the following conditions has been met:

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority, and the reviewing authority has indicated by stamp or certificate that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction whenever reviewing authority approval is necessary; or

(b) whenever reviewing authority approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the subdivision is inside a master planning area or a class 1 or class 2 municipality and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste.

History: **(1)En. Sec. 151, Ch. 197, L. 1967; R.C.M. 1947, 69-5004; (2)En. Sec. 150, Ch. 197, L. 1967; amd. Sec.4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(7), 69-5004; amd. Sec. 9, Ch. 490, L. 1985; amd. Sec. 5, Ch. 592, L. 1985.**

Cross-References

Classification of municipalities, 7-1-4111.

76-4-123. Review and approval required outside master planning areas and class 1 and class 2 municipalities. Outside master planning areas adopted pursuant to chapter 1 and class 1 and class 2 municipalities as provided in 76-4-124, a person may not file a subdivision plat with a county clerk and recorder, make disposition of a lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect a building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy a permanent building in a subdivision until the reviewing authority has indicated that the subdivision is subject to no sanitary restriction.

History: **En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(1); amd. Sec. 10, Ch. 490, L. 1985; amd. Sec. 6, Ch. 592, L. 1985.**

Cross-References

Classification of municipalities, 7-1-4111.

76-4-124. Type of review and approval required within master planning areas and class 1 and class 2 municipalities. (1) Within master planning areas adopted pursuant to chapter 1 or within a class 1 or class 2 municipality as defined in 7-1-4111, a subdivision, including a development of condominiums, is not subject to sanitary restrictions when the local governing body certifies that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision as provided in 76-4-127. In this case, reviewing authority approval is not necessary.

(2) To the extent that municipal facilities for the supply of water or disposal of sewage or solid waste are not to be provided for a subdivision as certified to by the governing body, the person wishing to subdivide must obtain reviewing authority approval as provided in 76-4-122(2)(a).

History: **En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(2), (3); amd. Sec. 11, Ch. 490, L. 1985; amd. Sec. 7, Ch. 592, L. 1985.**

76-4-125. Review of development plans — land divisions excluded from review. (1) Plans and specifications of a subdivision as defined in this part shall be submitted to the reviewing authority, and the reviewing authority shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the reviewing authority shall be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present to the reviewing authority a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the reviewing authority.

(b) The reviewing authority must give final action of the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) A subdivision excluded from the provisions of chapter 3 shall be submitted for review according to the provisions of this part, except that the following divisions, unless such exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that no dwelling or structure requiring water or sewage disposal is to be erected on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision; and

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(8), (10); amd. Sec. 12, Ch. 490, L. 1985.

76-4-126. Right to hearing. Upon denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by such denial may request a hearing before the board or the reviewing authority. Such hearings will be held pursuant to the Montana Administrative Procedure Act.

History: En. Sec. 5, Ch. 509, L. 1973; R.C.M. 1947, 69-5006; amd. Sec. 13, Ch. 490, L. 1985.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

76-4-127. Notice of certification that water and waste services will be provided by local government. (1) When a subdivision is reviewed under the provisions of 76-4-124, the local governing body shall, within 20 days after receiving preliminary plat approval under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision.

(2) The notice of certification shall include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat or a final plat where a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) a copy of the master plan, when applicable, if one has not yet been submitted to the reviewing authority;

(g) the relative location of the subdivision to the city or town; and

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(part); amd. Sec. 14, Ch. 490, L. 1985; amd. Sec. 8, Ch. 592, L. 1985.

76-4-128. Delegation of department review to local government. (1) The department shall delegate to a local government the authority to review a subdivision under this part when the subdivision involves five or fewer parcels and the local government has qualified personnel to adequately review the water supply and sewage and solid waste disposal facilities proposed for the subdivision.

(2) When a local government has conducted a review of a subdivision containing five or fewer parcels pursuant to this section, it shall advise the department of its recommendation for approval or disapproval of the subdivision. The department shall, within 10 days after receiving the recommendation of the local government, make a final decision on the subdivision.

(3) In delegating authority pursuant to this section, the department shall enter into an agreement with the local government wherein the department shall agree to transfer not less than $15 of the fee per parcel collected pursuant to 76-4-105 to the local government for the review of subdivisions containing five or fewer parcels.

History: En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(5); amd. Sec. 2, Ch. 553, L. 1981.

76-4-129. Joint application form and concurrent review. (1) Within 90 days after July 1, 1977, the department shall prepare and distribute a joint application form that can be used by an applicant to apply for approval of a subdivision under the provisions of this part and the provisions of chapter 3. When an application is received by either the department or a local government, the department or local government is responsible for forwarding the appropriate parts of the application to the other entity.

(2) The review required by this part and the provisions of chapter 3 shall occur concurrently.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(11); amd. Sec. 3, Ch. 236, L. 1981; amd. Sec. 6, Ch. 274, L. 1981.

76-4-130. Deviation from plans or specifications. A person may not construct or use a facility which deviates from the plans and specifications filed with the reviewing authority until the reviewing authority has approved the deviation.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(9); amd. Sec. 15, Ch. 490, L. 1985.

76-4-131. Applicability of public water supply laws. The exclusions provided for in 76-4-121 through 76-4-130 shall not relieve any person of the duty to comply with the requirements of Title 75, chapter 6.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(6).

76-4-132. Special revenue account — deposit and disbursement of lot fees. (1) All lot fees collected under 76-4-105 must be deposited in an account in the state special revenue fund for implementation of the subdivision review program as provided in this part.

(2) Funds in the account established in subsection (1) may be used only to pay department costs of implementation of the subdivision review program as provided in this part.

History: En. Sec. 2, Ch. 514, L. 1993.

Compiler's Comments

Applicability: Section 4, Ch. 514, L. 1993, provided: "[This act] applies to all lot fees received by the department of health and environmental sciences on or after July 1, 1993."

Effective Date: Section 5, Ch. 514, L. 1993, provided: "[This act] is effective July 1, 1993."

Parts 2 through 10 reserved

Part 11

Out-of-State Sales of In-State Subdivisions

76-4-1101. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Blanket encumbrance" shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, construction lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement.

(2) "Board" means the board of realty regulation provided for in 2-15-1867.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Subdivision" and "subdivided lands" mean any tract of land which is hereafter divided into five or more parcels, a parcel of which is less than 5 acres in size, and which is offered for sale or lease outside the state of Montana.

History: (1)En. Sec. 9, Ch. 191, L. 1963; Sec. 67-2109, R.C.M. 1947; (2) thru (4)En. Sec. 1, Ch. 191, L. 1963; amd. Sec. 321, Ch. 350, L. 1974; Sec. 67-2101, R.C.M. 1947; R.C.M. 1947, 67-2101, 67-2109; amd. Sec. 6, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

76-4-1102. Rules. The board may adopt rules necessary for the enforcement of this part.

History: En. Sec. 2, Ch. 191, L. 1963; amd. Sec. 322, Ch. 350, L. 1974; R.C.M. 1947, 67-2102.

Cross-References

Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

76-4-1103. Notice of intention to offer subdivided lands. Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent, or the subdivider shall notify the board in writing of his intention to sell or lease such offering.

History: En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974; R.C.M. 1947, 67-2103(1).

76-4-1104. Contents of notice. The notice of intention shall contain the following information:

(1) the name and address of the owner;

(2) the name and address of the subdivider;

(3) the legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads;

(4) a true statement of the conditions of the title to the land, particularly including all encumbrances thereon;

(5) a true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used;

(6) a true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas, and telephone facilities;

(7) copies of any advertising, information, promotion brochures, or similar material depicting the existing property or as it is to exist, which might cause or tend to induce purchase of the property or an interest therein when the material is or might be circulated outside of this state;

(8) such other information as the owner, his agent, or the subdivider may desire to present.

History: En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974; R.C.M. 1947, 67-2103(2).

76-4-1105. Fee for filing notice of intention. A filing fee of $50 shall accompany the notice of intention provided for in 76-4-1103.

History: En. Sec. 4, Ch. 191, L. 1963; R.C.M. 1947, 67-2104.

76-4-1106. Additional information required by board. After receiving the notice of intention, the board may require additional information concerning the project as it considers necessary, for which it may prepare a questionnaire for the owner, his agent, or the subdivider to answer.

History: En. Sec. 5, Ch. 191, L. 1963; amd. Sec. 324, Ch. 350, L. 1974; R.C.M. 1947, 67-2105.

76-4-1107. Fee for filing board questionnaire. When the questionnaire provided for in 76-4-1106 is filed, the person filing the questionnaire shall pay to the department a filing fee of $100.

History: En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 350, L. 1974; R.C.M. 1947, 67-2106(part).

76-4-1108. Disposition of fees and charges. (1) Fees and charges provided for by this part shall be paid to the department and deposited by it with the state treasurer.

(2) The state treasurer shall place 5% of these fees and charges in the general fund and 95% of these fees and charges in the state special revenue fund.

(3) Fees deposited in the state special revenue fund may be used to pay claims for expense incurred in the administration of this part when the claims have been approved as provided by law.

History: En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 350, L. 1974; R.C.M. 1947, 67-2106(part); amd. Sec. 1, Ch. 277, L. 1983.

76-4-1109. Investigation of subdivisions. The board may investigate any subdivision being offered for sale or lease under the provisions of this part. For the purpose of an investigation, the board may:

(1) use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United States department of veterans affairs, or any other agency having comparable duties and functions in relation to subdivisions or property therein;

(2) require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision;

(3) require evidence of compliance with the requirements of appropriate authorities;

(4) require an inspection of the subdivision to be made.

History: En. Sec. 7, Ch. 191, L. 1963; amd. Sec. 326, Ch. 350, L. 1974; R.C.M. 1947, 67-2107.

76-4-1110. Inspection of records by board. (1) Records of the sale or lease of parcels within a subdivision subject to the provisions of this part shall be subject to inspection by the board.

(2) The board shall be notified of any change of address affecting the location of the owner's, subdivider's, or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

History: En. Sec. 13, Ch. 191, L. 1963; amd. Sec. 330, Ch. 350, L. 1974; R.C.M. 1947, 67-2113.

76-4-1111. Notice of multiple sales or leases to one purchaser or lessee. When five or more lots or parcels within a subdivision subject to the provisions of this part are optioned, leased, or sold to another or when an interest therein is acquired by one owner, lessee, or optionee, the board shall be notified by the parties to the transaction.

History: En. Sec. 12, Ch. 191, L. 1963; amd. Sec. 329, Ch. 350, L. 1974; R.C.M. 1947, 67-2112.

76-4-1112. Required provisions in subdivision sales contracts. Every sales contract relating to the purchase of real property in a subdivision subject to the provisions of this part shall clearly set forth the legal description of the property, the principal amount of the blanket encumbrances outstanding at the date of the contract, and the terms of the contract.

History: En. Sec. 11, Ch. 191, L. 1963; R.C.M. 1947, 67-2111.

76-4-1113. Required provisions for protection of purchasers and lessees. It is unlawful for the owner or subdivider to offer to sell or lease or to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

(1) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the board until:

(a) (i) the title or other interest contracted for, whether it be title of record, equitable, or other interest, is delivered to such purchaser or lessee; and

(ii) a proper release is obtained from any such blanket encumbrance; or

(b) either the owner, subdivider, purchaser, or lessee defaults in his undertaking, in which event the money shall be paid to the party who is not in default and is entitled thereto.

(2) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the board until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(3) A bond in the amount of $2,500 to the state of Montana is furnished to the board for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to the terms as may be approved by the board, which shall provide for the return of moneys paid or advanced by any purchaser or lessee for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained. However, if the purchaser or lessee, by reason of default, is not entitled to the return of the money or any portion thereof, then the bond shall be exonerated to the extent of the amount of the money to which such purchaser or lessee is not entitled.

History: En. Sec. 10, Ch. 191, L. 1963; amd. Sec. 328, Ch. 350, L. 1974; R.C.M. 1947, 67-2110.

76-4-1114. Restriction on advertising. It is unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the board as provided for in this part.

History: En. Sec. 8, Ch. 191, L. 1963; amd. Sec. 327, Ch. 350, L. 1974; R.C.M. 1947, 67-2108.

76-4-1115. Misdemeanors enumerated. The following acts are misdemeanors:

(1) the willful violation of or failure to comply with any of the provisions of this part;

(2) the willful violation, failure, omission, or neglect to obey, observe, or comply with any order, permit, decision, demand, or requirement of the board;

(3) the offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner of subdivided lands or a subdivision, wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this part.

History: En. Sec. 16, Ch. 191, L. 1963; amd. Sec. 332, Ch. 350, L. 1974; R.C.M. 1947, 67-2116; amd. Sec. 12, Ch. 266, L. 1979.

Cross-References

Misdemeanor — penalty when none specified, 46-18-212.

76-4-1116. Enforcement procedures — hearing. (1) When in the opinion of the board a person has violated or is violating or is about to violate any of the provisions of this part, the board may order the person to desist and refrain from doing so.

(2) If an examination of the project shows that the sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees of lots or parcels in a subdivision, the board may issue an order prohibiting the sale or lease, or either, of the property in this state.

(3) If, after such an order is made, a request for a hearing by the board is filed in writing and a hearing is not held within 60 days thereafter, the order is rescinded.

History: En. Sec. 14, Ch. 191, L. 1963; amd. Sec. 331, Ch. 350, L. 1974; R.C.M. 1947, 67-2114.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

76-4-1117. Accrual of cause of action. (1) For the purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal, involving any violation of this part, the cause of action shall be considered to have accrued not earlier than the time of recording with the county clerk and recorder of the county in which the property was sold or leased in violation of this part, which recording describes a lot or parcel so wrongfully sold or leased.

(2) This section does not prohibit the maintenance of such action at any time during the recording of such instruments.

History: En. Sec. 15, Ch. 191, L. 1963; R.C.M. 1947, 67-2115; amd. Sec. 13, Ch. 266, L. 1979.

Part 12

In-State Sales of Out-of-State Subdivisions

76-4-1201. Short title. This part may be cited as the "Foreign Land Sales Practices Act".

History: En. Sec. 20, Ch. 97, L. 1969; R.C.M. 1947, 67-2136.

76-4-1202. Definitions. When used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of realty regulation provided for in 2-15-1867.

(2) "Chairman" means the chairman of the board of realty regulation.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Disposition" includes sale, lease, assignment, or any other transaction concerning a subdivision if undertaken for gain or profit.

(5) "Offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land if undertaken for gain or profit.

(6) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(7) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

(8) "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner.

(9) "Subdivision" and "subdivided lands" mean any land which is divided or is proposed to be divided for the purpose of disposition into five or more lots, parcels, units, or interests and also include any land, whether contiguous or not, if five or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

History: **En. Sec. 1, Ch. 97, L. 1969; amd. Sec. 333, Ch. 350, L. 1974; R.C.M. 1947, 67-2117; amd. Sec. 7, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.**

76-4-1203. Administration and rules. (1) This part shall be administered by the board. In the administration of this part, the board shall have all of the powers and duties as stated in 37-51-201(2), (3), and (4) and 37-51-205.

(2) The board shall adopt reasonable rules relating to the administration of this part, but not inconsistent therewith, which may be amended or repealed. The rules shall include but need not be limited to:

(a) provisions for advertising standards to assure full and fair disclosure;

(b) provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

(c) provisions for operating procedures; and

(d) other rules necessary and proper to accomplish the purpose of this part.

History: **En. Secs. 2, 10, Ch. 97, L. 1969; amd. Secs. 334, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part), 67-2126(1); amd. Sec. 8, Ch. 497, L. 1979.**

Cross-References

Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

76-4-1204. Board involvement in lawsuits. The board may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the department notice of the suit and copies of all pleadings.

History: **En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(4).**

76-4-1205. Cooperation with other states. The board shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms; uniform public offering statements, advertising standards, and rules; and common administrative practices.

History: **En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(6).**

76-4-1206. Investigative powers of board. The board may:

(1) make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this part or any rule or order hereunder or to aid in the enforcement of this part or in the prescribing of rules and forms hereunder;

(2) require or permit any person to file a statement in writing, under oath or otherwise as the board determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) contract with similar agencies in this state or other jurisdictions to perform investigative functions.

History: En. Secs. 10, 11, Ch. 97, L. 1969; amd. Secs. 340, 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(5)(b), 67-2127(1).

76-4-1207. Procedure to gather information — subpoena power. (1) For the purpose of any investigation or proceeding under this part, the board or any officer designated by rule may administer oaths or affirmations and, upon its own motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(2) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the board may apply to any district court of this state for an order compelling compliance.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(2), (3).

76-4-1208. Appeals procedure. (1) Any person directly affected by any ruling, determination, or decision of the board or any officer thereof may appeal to the board for hearing and review by serving written notice of appeal upon the chairman within 15 days after such rule, determination, or decision is mailed to or served upon the person. Notice of appeal shall state specifically the matters that the appellant desires reviewed but shall not act as a stay unless otherwise provided by this part.

(2) Upon receipt of notice of appeal, the chairman shall serve upon the appellant notice of time and place of said hearing not less than 15 days prior to the date of hearing, to be held in the offices of the department in Helena, Montana, or elsewhere as the chairman shall order.

(3) The board may postpone or continue a hearing from time to time as it considers necessary.

(4) If the appellant or his representative fails to appear at the hearing after due notice and good cause for continuance is not shown, the board shall render its decision upon the evidence presented to it.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1209. General rules governing appeals. (1) The board is not bound by any laws of evidence of this state.

(2) No member of the board shall hear any matter in which he has a personal interest, nor shall he represent any person or witness at the hearing.

(3) (a) Four members of the board shall constitute a quorum, one of whom must be the chairman.

(b) Any party to the proceedings may challenge any board member in writing, served upon the chairman of the board 5 days in advance of any scheduled appeal hearing, stating the reasons therefor, and if the board shall find merit in the challenge, it shall disqualify the challenged member. If disqualification reduces the board membership to less than four, the remaining members shall appoint disinterested people to fill the vacancies to provide a four-man hearing board.

(4) The decision of any three board members shall constitute the decision of the board on any issue presented for its decision.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1210. Scope of review — board jurisdiction. The board shall have continuing jurisdiction over all matters heard by it to examine additional evidence or to hear additional testimony and to revise, modify, alter, amend, or reverse all orders, demands, findings, and decisions made by it at any time and shall not lose jurisdiction until jurisdiction has been taken by a court of competent jurisdiction in a proceeding filed in such court.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1211. Application fee. The board shall charge a fee not to exceed $500 for each application for registration of subdivided lands received in accordance with this part.

History: En. Sec. 2, Ch. 97, L. 1969; amd. Sec. 334, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part).

76-4-1212. Disposition of fee. The application fee shall be paid into the state special revenue fund to the credit of the board and is hereby appropriated for the purposes of carrying out the provisions of this part, subject to 37-1-101(6).

History: En. Sec. 2, Ch. 97, L. 1969; amd. Sec. 334, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part); amd. Sec. 1, Ch. 277, L. 1983.

76-4-1213. Financial management. (1) All expenditures of the funds by the board under the provisions of this part shall be certified and approved by the board and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds.

(2) The department shall provide a system of accounting which shall show the amount of money received therefor and also an itemized statement of expenses in connection therewith.

(3) The board may make orders concerning the disbursement of the money in the state special revenue fund, including the payment of compensation and expenses of board members.

(4) The board may accept grants-in-aid from any source.

History: En. Secs. 2, 10, Ch. 97, L. 1969; amd. Secs. 334, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part), 67-2126(5)(c); amd. Sec. 1, Ch. 277, L. 1983.

76-4-1214 through 76-4-1220 reserved.

76-4-1221. Exemptions for certain subdivisions. Unless the method of disposition is adopted for the purpose of evasion of this part, the provisions of this part do not apply to:

(1) a subdivision as to which the plan of disposition is to dispose to 10 or fewer persons;

(2) a subdivision as to which the board has granted an exemption as provided in 76-4-1225.

History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1222. Exemptions for certain securities and notes. Unless the method of disposition is adopted for the purpose of evasion of this part, the provisions of this part do not apply to offers or dispositions of:

(1) securities currently registered with the securities commissioner of this state;

(2) any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the securities commissioner of this state;

(3) securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(4) evidences of indebtedness secured by a mortgage or deed of trust of real estate.

History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part); amd. Sec. 8, Ch. 351, L. 1979.

76-4-1223. Exemptions for certain transactions. Unless the method of disposition is adopted for the purpose of evasion of this part, the provisions of this part do not apply to offers or dispositions of an interest in land:

(1) by a purchaser of subdivided lands for his own account in a single or isolated transaction;

(2) if fewer than five separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of 12 months;

(3) on which there is a residential, commercial, or industrial building or as to which there is a legal obligation on the part of the seller to construct such a building within 2 years from date of disposition;

(4) to persons who are engaged in the business of construction of buildings for resale or to persons who acquire an interest in subdivided lands for the purpose of engaging and do engage in the business of construction of buildings for resale.

History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1224. Miscellaneous exemptions. Unless the method of disposition is adopted for the purpose of evasion of this part, the provisions of this part do not apply to offers or dispositions of an interest in land:

(1) pursuant to court order;

(2) by any government or government agency;

(3) as cemetery lots or interests.

History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1225. Exemption granted by board. The board may exempt a subdivision of 25 or fewer lots, parcels, units, or interests from the provisions of this part if it determines that the plan of promotion and disposition is primarily directed to persons in the local community in which the subdivision is situated.

History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(7).

76-4-1226. Regulation of disposition of interests in subdivisions. Unless the subdivided lands or the transaction is exempt by 76-4-1221 through 76-4-1224:

(1) no person may offer or dispose in this state of any interest in subdivided lands located without this state prior to the time the subdivided lands are registered in accordance with this part;

(2) no person may dispose of any interest in subdivided lands without this state unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.

History: En. Sec. 4, Ch. 97, L. 1969; R.C.M. 1947, 67-2120.

76-4-1227. Application for registration. (1) The application for registration of subdivided lands shall be filed with the department as prescribed by the board's rules.

(2) The board may accept registrations filed in other states or with the federal government.

History: En. Secs. 5, 10, Ch. 97, L. 1969; amd. Sec. 335, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(part), 67-2126(5)(a).

76-4-1228. Contents of application relating to subdivided land. The application shall contain the following documents and information:

(1) a legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests, and the relation of the subdivided lands to existing streets, roads, and other offsite improvements;

(2) a statement, in a form acceptable to the board, of the condition of the title to the subdivided lands including encumbrances, as of a specified date within 30 days of the date of application, by a title opinion of an attorney licensed to practice in this state, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the board;

(3) copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(4) copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(5) if there is a lien or encumbrance affecting more than one lot, parcel, unit, or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(6) copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivided lands;

(7) a statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands;

(8) a statement of the existing provisions for access, sewage, disposal, water, and other public utilities in the subdivision; a statement of the

improvements to be installed; the schedule for their completion; and a statement as to the provisions for improvement maintenance.

History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(b), (f), (g), (h), (i), (j), (k), (l).

76-4-1229. Contents of application relating to applicant. The application shall contain the following information and documents:

(1) the applicant's name and address and the form, date, and jurisdiction of organization and the address of each of its offices in this state;

(2) the name, address, and principal occupation for the past 5 years of every director and officer of the applicant or person occupying a similar status or performing similar functions and the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within 30 days of the filing of the application.

History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(d), (e).

76-4-1230. Additional contents of application. The application shall contain the following information and documents:

(1) an irrevocable appointment of the department to receive service of any lawful process in any noncriminal proceeding arising under this part against the applicant or his personal representative;

(2) the states or jurisdictions in which an application for registration or similar document has been filed and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;

(3) a narrative description of the promotional plan for the disposition of the subdivided lands, together with copies of all advertising material which has been prepared for public distribution by any means of communication;

(4) the proposed public offering statement;

(5) any other information, including any current financial statement, which the board by its rules requires for the protection of purchasers.

History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(a), (c), (m), (n), (o).

76-4-1231. Consolidation of application for subsequent offerings. If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(2).

76-4-1232. Report of material changes affecting application. The subdivider shall immediately report any material changes in the information contained in an application for registration.

History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(3).

76-4-1233. Public offering statement. (1) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands.

(2) The proposed public offering statement submitted to the department shall be in a form prescribed by the board's rules and shall include the following:

(a) the name and principal address of the subdivider;

(b) a general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering;

(c) the significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

(d) a statement of the use for which the property is offered;

(e) information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;

(f) additional information required by the board to assure full and fair disclosure to prospective purchasers.

History: En. Sec. 6, Ch. 97, L. 1969; amd. Sec. 336, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(1).

76-4-1234. Regulation of advertising. (1) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the board requires it.

(2) No person may advertise or represent that the board approves or recommends the subdivided lands or disposition thereof.

(3) The board by rule or order, after reasonable notice and hearing, may require the filing of advertising material relating to subdivided lands prior to its distribution.

History: En. Secs. 6, 10, Ch. 97, L. 1969; amd. Secs. 336, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(2), 67-2126(2).

76-4-1235. Changes in public offering statement. (1) The board may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers.

(2) No change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the board and without making appropriate amendment of the public offering statement.

(3) A public offering statement is not current unless all amendments are incorporated.

History: En. Sec. 6, Ch. 97, L. 1969; amd. Sec. 336, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(3).

76-4-1236. Examination of application. On receipt of an application for registration in proper form by the department, the board shall forthwith initiate an examination to determine that:

(1) the subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer and, when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

(2) there is reasonable assurance that all proposed improvements will be completed as represented;

(3) the advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the board in its rules and afford full and fair disclosure;

(4) the subdivider has not or, if a corporation, its officers, directors, and principals have not been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past 10 years and have not been subject to any injunction or administrative order entered by any authority within the past 10 years restraining a false or misleading promotional plan involving land dispositions;

(5) the public offering statement requirements of this part have been satisfied.

History: En. Sec. 7, Ch. 97, L. 1969; amd. Sec. 337, Ch. 350, L. 1974; R.C.M. 1947, 67-2123.

76-4-1237. Notice of filing. On receipt of the application for registration in proper form, the department shall issue a notice of filing to the applicant.

History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(part).

76-4-1238. Processing of application — registration of land. (1) Within 90 days from the date of the notice of filing, the board shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within 90 days from the date of notice of filing, the land shall be considered registered unless the applicant has consented in writing to a delay.

(2) If the board affirmatively determines upon inquiry and examination that the requirements of 76-4-1236 have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(3) (a) If the board determines upon inquiry and examination that any of the requirements of 76-4-1236 have not been met, it shall notify the applicant that the application for registration must be corrected in the particulars specified within 10 days. If the requirements are not met within the time allowed, the board shall enter an order rejecting the registration, which shall include the findings of fact upon which the order is based.

(b) The order rejecting the registration shall not become effective for 20 days, during which time the applicant may petition for reconsideration and is entitled to a hearing.

History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(part).

76-4-1239. Bonding requirements. No subdivided lands may be registered or considered registered until the subdivider has filed a bond with the department, executed by a surety company authorized to do business in this state, on a form approved by the board and in such amount as the board shall deem necessary to protect purchasers from damages arising out of violation of any provision of Montana law or any rule promulgated in furtherance thereof, when the volume of business of the subdivider and other related factors are taken into consideration, but in no event less than $50,000.

History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(4).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

76-4-1240. Annual report. (1) Within 30 days after each annual anniversary of an order registering subdivided lands, the subdivider shall file a report with the department in the form prescribed by the rules of the board. The report shall reflect any material changes in information contained in the original application for registration.

(2) The board may permit the filing of annual reports within 30 days after the anniversary date of the consolidated registration instead of the anniversary date of the original registration.

History: En. Sec. 9, Ch. 97, L. 1969; amd. Sec. 339, Ch. 350, L. 1974; R.C.M. 1947, 67-2125.

76-4-1241. Cease and desist orders. The board may issue an order requiring a person to cease and desist from an unlawful practice and to take such affirmative action as in the judgment of the board will carry out the purposes of this part if the board determines after notice and hearing that the person has:

(1) violated any provision of this part;

(2) directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;

(3) made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the board;

(4) disposed of any subdivided lands which have not been registered with the board; or

(5) violated any lawful order or rule of the board.

History: En. Sec. 12, Ch. 97, L. 1969; amd. Sec. 342, Ch. 350, L. 1974; R.C.M. 1947, 67-2128(1).

76-4-1242. Temporary cease and desist order. If the board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the board whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person subject to the order. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within 20 days to determine whether or not it becomes permanent.

History: **En. Sec. 12, Ch. 97, L. 1969; amd. Sec. 342, Ch. 350, L. 1974; R.C.M. 1947, 67-2128(2).**

76-4-1243. Revocation of registration. (1) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

(a) failed to comply with the terms of a cease and desist order;

(b) been convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, deceptive practices, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(c) disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;

(d) failed to faithfully perform any stipulation or agreement made with the board as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(e) made intentional misrepresentations or concealed material facts in an application for registration.

(2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(3) If the board finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

History: **En. Sec. 13, Ch. 97, L. 1969; amd. Sec. 343, Ch. 350, L. 1974; amd. Sec. 55, Ch. 359, L. 1977; R.C.M. 1947, 67-2129.**

76-4-1244. Injunctive relief for violations. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this part or a rule or order hereunder, the board, with or without prior administrative proceedings, may bring an action in any district court of this state to enjoin the acts or practices and to enforce compliance with this part or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The board is not required to post a bond in any court proceedings.

History: **En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(3).**

Cross-References

Injunctions, Title 27, ch. 19.

76-4-1245. Penalties. Any person who violates any provision of this part or who willfully violates any rule adopted under it or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact may be fined not less than $1,000 or more than $5,000 or may be imprisoned for not more than 2 years, or both.

History: **En. Sec. 15, Ch. 97, L. 1969; R.C.M. 1947, 67-2131; amd. Sec. 14, Ch. 266, L. 1979.**

Cross-References

Felony defined, 45-1-201.

76-4-1246. Extradition proceedings. In the proceedings for extradition of a person charged with a crime under this part, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

History: En. Sec. 18, Ch. 97, L. 1969; R.C.M. 1947, 67-2134.

Cross-References

Uniform Criminal Extradition Act, Title 46, ch. 30.

76-4-1247. Civil remedies. (1) Any person who disposes of subdivided lands in violation of 76-4-1226, who in disposing of subdivided lands makes an untrue statement of a material fact, or who in disposing of subdivided lands omits a material fact required to be stated in a registration statement or public offering statement or necessary to make the statements made not misleading is liable as provided in this section to the purchaser unless, in the case of an untruth or omission, it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care could not have known of the untruth or omission or that the purchaser did not rely on the untruth or omission.

(2) In addition to any other remedies, the purchaser, under subsection (1), may recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands, together with interest at the rate of 6% per year from the date of payment, property taxes paid, costs, and reasonable attorneys' fees less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate of 6% per year on that amount from the date of disposition.

(3) A tender of reconveyance may be made at any time before the entry of judgment.

History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(a), (b), (e).

76-4-1248. Details of civil liability. (1) (a) Every person who directly or indirectly controls a subdivider liable under 76-4-1247(1), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(b) There is a right to contribution as in cases of contract among persons so liable.

(2) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or public offering statement, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and

omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(c), (d).

76-4-1249. Waiver of rights under part void. Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this part or any rule or order under it is void.

History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(f).

76-4-1250. Jurisdiction. Dispositions of subdivided lands are subject to this part, and any district court of this state has jurisdiction in claims arising under this part if:

(1) the subdivider's principal office is located in this state; or

(2) any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

History: En. Sec. 17, Ch. 97, L. 1969; R.C.M. 1947, 67-2133.

76-4-1251. Service of process. (1) In addition to the methods of service of process provided for in the Montana Rules of Civil Procedure, service may be made upon any person for any cause arising under the provisions of this part by delivering a copy of the process to the office of the department, but it is not effective unless:

(a) the plaintiff (which may be the board in a proceeding instituted by it) immediately sends a copy of the process and of the pleading by registered or certified mail to the defendant or respondent at his last known address; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(2) If any person, including any nonresident of this state, engages in conduct prohibited by this part or any rule or order hereunder and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct authorizes the department to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this part or any rule or order hereunder with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (1).

History: En. Sec. 19, Ch. 97, L. 1969; amd. Sec. 344, Ch. 350, L. 1974; R.C.M. 1947, 67-2135.

CHAPTER 5

FLOODPLAIN AND FLOODWAY MANAGEMENT

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76-5-1111. Apportionment of costs.
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76-5-1113. Special assessments for operation and maintenance authorized.
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76-5-1116. Determination of fees and charges.
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Chapter Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Flood control by water and sewer districts, 7-13-2218.

Flood Control Act of 1954 — distribution of revenues to counties, 17-3-231, 17-3-232.

Easements relating to flooding, 70-17-101.

Application of the Natural Streambed and Land Preservation Act of 1975, 75-7-105.

Renewable resource development program — flood control, 85-1-602.

Flood control by conservancy districts, 85-9-102.

Part 1
General Provisions

76-5-101. Findings. The people of the state of Montana find that:

(1) recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions; all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state; and

(2) the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health and reduce private and public economic losses.

History: En. Sec. 1, Ch. 393, L. 1971; R.C.M. 1947, 89-3501.

76-5-102. Policy and purposes. (1) The policy and purposes of parts 1 through 4 of this chapter are to:

(a) guide development of the floodway areas of this state consistent with the enumerated findings;

(b) recognize the right and need of watercourses to periodically carry more than the normal flow of water;

(c) provide state coordination and technical assistance to local units in management of floodway areas;

(d) coordinate federal, state, and local management activities for floodway areas;

(e) encourage local governmental units to manage flood-prone lands, including the adoption, enforcement, and administration of land use regulations; and

(f) provide the department of natural resources and conservation with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of parts 1 through 4 to:

(a) restrict or prohibit uses which are dangerous to health or safety of property in times of flood or cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard;

(d) distinguish between the land use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;

(e) apply more restrictive land use regulations within the designated floodway;

(f) ensure that regulations and minimum standards adopted under parts 1 through 4, insofar as possible, balance the greatest public good with the least private injury.

History: En. Sec. 2, Ch. 393, L. 1971; amd. Sec. 194, Ch. 253, L. 1974; amd. Sec. 1, Ch. 271, L. 1974; R.C.M. 1947, 89-3502.

76-5-103. Definitions. As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction which is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Designated floodplain" means a floodplain whose limits have been designated and established by order of the board.

(6) "Designated floodway" means a floodway whose limits have been designated and established by order of the board.

(7) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

(8) "Establish" means construct, place, insert, or excavate.

(9) "Flood" means the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway.

(10) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude which has a 1% chance of occurring in any given year.

(11) "Floodplain" means the area adjoining the watercourse or drainway which would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" by the federal emergency management agency.

(12) "Floodway" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

(13) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause.

(14) "Owner" means any person who has dominion over, control of, or title to an obstruction.

(15) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

(16) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

(17) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks; provided that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse.

History: En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974; R.C.M. 1947, 89-3503(part); amd. Sec. 1, Ch. 428, L. 1981.

76-5-104. Presumption that depression is watercourse. In the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse.

History: En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974; R.C.M. 1947, 89-3503(part).

76-5-105. Authority to enter and investigate lands or waters. (1) The department or the responsible political subdivision may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by parts 1 through 4 of this chapter. Unless written consent is obtained, however, the department or the responsible political subdivision shall provide written notice of its entry by personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the department or the responsible political subdivision shall affix a copy of the notice to one or more conspicuous places on the property.

(2) An investigation of a natural or artificial obstruction or nonconforming use shall be made by the department or the responsible political subdivision either on its own initiative, on the written request of three titleholders of land abutting the watercourse or drainway involved, or on the written request of a political subdivision. Upon the request of an owner, owner's agent, lessee, or lessee's agent whose lands will be entered to undertake the investigation, the department or the responsible political subdivision shall release the names and addresses of the persons or political subdivision requesting the investigation.

History: En. Sec. 9, Ch. 393, L. 1971; amd. Sec. 201, Ch. 253, L. 1974; amd. Sec. 8, Ch. 271, L. 1974; R.C.M. 1947, 89-3509; amd. Sec. 1, Ch. 382, L. 1985.

76-5-106. Exemption for small drainage area. Parts 1 through 4 of this chapter shall not extend to any obstruction in the floodplain or floodway of a watercourse or drainway where the drainage area above the same, either within or without the state, is less than 25 square miles in extent unless a particular watercourse or drainway is expressly declared to be within the coverage of parts 1 through 4 by order of the board.

History: En. Sec. 10, Ch. 393, L. 1971; amd. Sec. 9, Ch. 271, L. 1974; R.C.M. 1947, 89-3510.

76-5-107. Federal supremacy. Parts 1 through 4 do not interfere with the right of the United States to regulate interstate commerce or the navigable waters of the United States.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).

76-5-108. Permit construed as added requirement. The granting of a permit under parts 1 through 4 of this chapter does not affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision, or of the United States but is an added requirement.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).

76-5-109. Other legal remedies preserved — immunity. (1) The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity.

(2) Where it is shown that there is a wrongful failure to comply with parts 1 through 4 of this chapter, there is a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(3) The use of any one of the remedies or powers given to the board or the department in parts 1 through 4 is not a bar to the exercise of any other remedy or power given by parts 1 through 4.

(4) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under parts 1 through 4 may not be brought against the state, the board, a member of the board, or the department.

History: (1), (2), (4)En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; Sec. 89-3514, R.C.M. 1947; (3)En. Sec. 15, Ch. 393, L. 1971; amd. Sec. 205, Ch. 253, L. 1974; Sec. 89-3515, R.C.M. 1947; R.C.M. 1947, 89-3514(part), 89-3515.

76-5-110. Penalties for violation. Any person who violates 76-5-401 through 76-5-404 shall be guilty of a misdemeanor and shall upon conviction thereof be fined not more than $100 or be imprisoned in the county jail for not more than 10 days or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

History: En. Sec. 13, Ch. 393, L. 1971; R.C.M. 1947, 89-3513.

Part 2

Role of State Agencies

76-5-201. Program for delineation of floodplains and floodways. (1) The department shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for such acquisition.

(2) Before the board establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation shall include but not be limited to the following:

(a) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as considered appropriate;

(b) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching such conclusions; and

(c) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(1).

76-5-202. Designation of floodplains and floodways. (1) When sufficient data has been acquired by the department, the board shall establish, by order after a public hearing, the designated floodplain within which a political subdivision may establish land use regulation.

(2) When sufficient data has been acquired, the board shall establish, by order after a public hearing, the designated floodway within which a political subdivision may establish land use regulation.

(3) These designations shall be based upon reasonable hydrological certainty. Designations made according to a flood hazard boundary map prepared by the federal emergency management agency have a rebuttable presumption of reasonable hydrological certainty.

(4) The department shall record all designated floodplains or designated floodways established by the board in the office of the county clerk and recorder of each county in which those floodplains or floodways are found.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 1, Ch. 160, L. 1987.

76-5-203. Alteration of floodplains or floodways. The board may alter the floodplains or floodways at any later time, by order after a public hearing, if a reevaluation of the then available flood data warrants it.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part).

76-5-204. What constitutes notice. Notice of a hearing or order of the board establishing or altering the floodplains or floodways shall be given by publishing the notice once each week for 3 consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than 10 days prior to the date set for the hearing or the effective date of the order.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part).

76-5-205. Furnishing of material to local governments. (1) When the designated floodplain or the designated floodway has been established, the department shall furnish this data to officials of the political subdivision having jurisdiction over those areas, together with a map outlining the areas involved, a copy of parts 1 through 4 of this chapter, adopted rules of the board, and suggested minimum standards adopted by the board.

(2) These standards and rules shall reflect gradations in flood hazard based on criteria as outlined in 76-5-406. In adopting these standards and rules, the board shall consider local input from the affected political subdivisions.

History: **En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part).**

76-5-206. Powers and duties of department relative to obstructions. (1) Where an obstruction to a designated floodway established under 76-5-202 through 76-5-205 has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the department may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the department.

(2) Where, after investigation, notice, and hearing, an order has been issued by the board to the owner of an obstruction not exempt under 76-5-401 through 76-5-404 for its removal or repair and the order is not complied with within such reasonable time as may be prescribed or if the owner cannot be found or determined, the department may make or cause the removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law.

History: **En. Sec. 8, Ch. 393, L. 1971; amd. Sec. 5, Ch. 294, L. 1973; amd. Sec. 200, Ch. 253, L. 974; amd. Sec. 7, Ch. 271, L. 1974; R.C.M. 1947, 89-3508.**

76-5-207. Floodway obstruction removal fund. The state treasurer shall establish the floodway obstruction removal fund and credit to the fund for the removal of obstructions as provided in 76-5-206(1) such money specifically appropriated by the legislature. The department may allocate money from the floodway obstruction removal fund for purposes provided in 76-5-206(1).

History: **En. Sec. 12, Ch. 393, L. 1971; amd. Sec. 203, Ch. 253, L. 1974; R.C.M. 1947, 89-3512.**

76-5-208. Orders and rules. (1) The board may adopt such orders and rules as are necessary to implement parts 1 through 4 of this chapter. All orders and rules adopted by the board shall be on file at the offices of the department and in the office of the county clerk and recorder of each county affected by the order or rule.

(2) If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under 76-5-401 through 76-5-404 for its removal or repair, the order shall not become effective less than 10 days after a hearing is held relating to the order.

(3) In addition to any requirement imposed by 76-5-202 through 76-5-205, where an order is issued which affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order and of any required hearing shall be mailed by the department to the titleholder of the land not less than 10 days before the effective date of the order or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial obstruction or nonconforming use not less than 10 days before the date of the hearing. However, the notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to 76-5-206(2) if the owner cannot be found or determined.

History: En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974; R.C.M. 1947, 89-3511(part).

Cross-References

Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

76-5-209. Appeal from board order. (1) A person aggrieved by any order of the board issued under parts 1 through 4 of this chapter may appeal from the order to a court of competent jurisdiction within 30 days after its effective date. Service of notice of the appeal shall be made upon the department.

(2) If an appeal is taken, enforcement of the order shall be stayed pending the outcome of the appeal.

History: En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974; R.C.M. 1947, 89-3511(part).

Cross-References

Contested cases under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Part 3

Role of Local Government

Part Cross-References

Flood Control Act of 1954 — distribution of revenue to counties, 17-3-231, 17-3-232.

76-5-301. Land use regulations. (1) Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land use regulations which meet or exceed the minimum standards of the board. Such regulations may include, for the purposes of floodplain management only, floodplain management regulations within sheetflood areas as determined by the federal emergency management agency.

(2) If within the 6-month period the political subdivision has failed to adopt the land use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the board under 76-5-202 through 76-5-205, and no artificial obstruction or nonconforming use may be established by any person within the designated floodplain or the designated floodway unless specifically authorized by the board.

(3) A political subdivision which has failed to adopt land use regulations which meet or exceed the minimum standards of the board within the 6-month period may subsequently adopt such regulations, and if approved by the board, they shall be effective within the designated floodplain or floodway and administered and enforced by the political subdivision.

(4) When necessary for compliance with federal flood insurance requirements, the board may shorten the 6-month period upon notification to the political subdivision and publication of a notice thereof in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks.

History: **En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(3) thru (5); amd. Sec. 1, Ch. 74, L. 1983.**

Cross-References

Master plan notation of flood control measures, 76-1-601.

76-5-302. Substitution of local control for state permit system. (1) If a political subdivision enacts, in harmony with the purposes of parts 1 through 4 of this chapter, permit issuance ordinances, regulations, or resolutions and land use ordinances, regulations, or resolutions which meet or exceed the minimum standards of the board and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the board, no permit from the department is required.

(2) However, if the board determines that there is a failure by a political subdivision to comply with the intent, purposes, and provisions of parts 1 through 4 and the minimum standards adopted thereunder, the powers of the political subdivision may be suspended after hearing and the minimum standards adopted by the board shall be enforced by the department until such time as the board determines that the political subdivision will comply.

History: **En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).**

Part 4

Use of Floodplains and Floodways

Part Cross-References

Easements relating to flooding, 70-17-101.

76-5-401. Permissible open-space uses. The following open-space uses shall be permitted within the designated floodway to the extent that they are not prohibited by any other ordinance or statute and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

(1) agricultural uses;

(2) industrial-commercial uses such as loading areas, parking areas, or emergency landing strips;

(3) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails;

(4) forestry, including processing of forest products with portable equipment;

(5) residential uses such as lawns, gardens, parking areas, and play areas;

(6) excavations subject to the issuance of a permit under 76-5-405 and 76-5-406.

History: **En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(2).**

Cross-References

Recreational use of flood control channel prohibited, 23-2-301, 23-2-302.

76-5-402. Permissible uses within floodplain but outside of floodway. Permits shall be granted for the following uses within that portion of the floodplain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:

(1) any use permitted in the designated floodway;

(2) structures, including but not limited to residential, commercial, and industrial structures, provided that:

(a) such structures meet the minimum standards adopted by the board;

(b) residential structures are constructed on fill such that the lowest floor elevation (including basements) is 2 feet above the 100-year flood elevation;

(c) commercial and industrial structures are either constructed on fill as specified in subsection (b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. Such floodproofing shall be in accordance with the minimum standards adopted by the board.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(3).

76-5-403. Prohibited uses within floodway. The following nonconforming uses shall be prohibited within the designated floodway:

(1) a building for living purposes or place of assembly or permanent use by human beings;

(2) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;

(3) the construction or permanent storage of an object subject to flotation or movement during flood level periods.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(4).

Cross-References

Recreational use of flood control channel prohibited, 23-2-301, 23-2-302.

76-5-404. Artificial obstructions and nonconforming uses. (1) An artificial obstruction or nonconforming use in a designated floodplain or designated floodway enforced under 76-5-301 (1) and (2) and not exempt under subsections (2) or (3) of this section or 76-5-401 through 76-5-403 is a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the department or the responsible political subdivision.

(2) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway without a permit from the department or the responsible political subdivision.

(3) (a) Parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use established in the designated floodplain or designated floodway before the land use regulations adopted by the political subdivision are effective or before the board has enforced a designated floodplain or a designated floodway under 76-5-301 (1) and (2).

(b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway whether the obstruction proposed for alteration was located in the floodplain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration.

History: En. Secs. 5, 6, Ch. 393, L. 1971; amd. Secs. 3, 4, Ch. 294, L. 1973; amd. Secs. 197, 198, Ch. 253, L. 1974; amd. Secs. 4, 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3505, 89-3506(1).

76-5-405. Variance for obstruction or nonconforming use. (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses which would otherwise violate 76-5-401 through 76-5-404. The application for the permit shall be submitted to the department or the responsible political subdivision and contain such information as the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated floodplain or designated floodway of watercourses must be specifically approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated floodplains or designated floodways shall be conclusively deemed to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after such time as the board or the responsible political subdivision shall specify, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to this section and 76-5-406.

(3) An application for a permit shall be accompanied by a nonrefundable application fee of $10 which the state treasurer shall credit to the floodway obstruction removal fund.

(4) The department or the responsible political subdivision may make a part of the permit any reasonable conditions it may consider advisable. In order for the permit to continue to remain in force, the obstruction or use must be maintained so as to comply with the conditions and specifications of the permit.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part).

76-5-406. Criteria to be considered in connection with variance request. In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the board:

(1) the danger to life and property by water which may be backed up or diverted by the obstruction or use;

(2) the danger that the obstruction or use will be swept downstream to the injury of others;

(3) the availability of alternate locations;

(4) the construction or alteration of the obstruction or use in such a manner as to lessen the danger;

(5) the permanence of the obstruction or use;

(6) the anticipated development in the foreseeable future of the area which may be affected by the obstruction or use; and

(7) such other factors as are in harmony with the purpose of parts 1 through 4 of this chapter.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part).

Parts 5 through 10 reserved

Part 11

Water Conservation and Flood Control Projects

Part Cross-References

Flood Control Act of 1954 — distribution of revenue to counties, 17-3-231, 17-3-232.

Eminent domain for flooding from construction of dam, 70-30-104.

Flood control function of conservancy districts, 85-9-102.

76-5-1101. Water conservation and flood control projects authorized. (1) Cities, towns, or counties, through their councils, boards of county commissioners, or other governing body, are hereby empowered, either individually or jointly, to engage or participate in the establishment of water conservation and flood control projects within the limits of such city, town, or county:

(a) for the protection or reclamation of property situated therein from floods or high waters and to protect property therein from the effects of floodwater; and

(b) for the conservation, development, storage, distribution, drainage, and utilization of water for purposes beneficial to the district.

(2) Purposes beneficial to the district include but are not limited to industrial and municipal water supply, recreation and wildlife, irrigation, streamflow stabilization, household and domestic use, and pollution abatement whenever the establishment of such a water conservation and flood control system shall, in the judgment of the city council, board of county commissioners, or other governing body, be conducive to public convenience and welfare.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).

76-5-1102. Types of projects. Such cities, towns, or counties in accordance with the provisions of this part, individually, jointly, or severally or in cooperation with the federal or state government or any department or agency thereof and with each other, may deepen, widen, straighten, alter, change, divert, or otherwise improve the watercourses within or without their limits by constructing levees, dikes, embankments, structures, impounding reservoirs, or conduits and improve, widen, and establish streets, alleys, and boulevards across and adjacent to the abandoned or new channel or conduit and provide for the payment of the cost and maintenance of such project or projects under the terms of this part.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).

76-5-1103. Water conservation and flood control activities declared public purpose. Such water conservation and flood control activities and their establishment, construction, operation, and maintenance as authorized by this part are declared to be for the protection of the tax base of the city, town, or county; for the protection of public roads, lands, and improvements; for the protection of the public health, sanitation, and safety; and for improvement of the general welfare.

History: En. Sec. 2, Ch. 272, L. 1965; amd. Sec. 2, Ch. 284, L. 1967; R.C.M. 1947, 89-3302.

76-5-1104. Construction of part. (1) This part and each section thereof shall be construed as granting additional power without limiting the power already existing in cities, towns, and counties.

(2) The provisions of this part and the methods of organization of water conservation and flood control projects are hereby declared to be an alternative method to any other method proposed by any law now in existence or hereafter enacted for the creation of such projects, and it is hereby declared that no provision hereof shall be amended or repealed by implication or otherwise as being in conflict with any existing law or future enactment unless specifically so declared by the legislature.

History: (1)En. Sec. 13, Ch. 272, L. 1965; Sec. 89-3313, R.C.M. 1947; (2)En. Sec. 12, Ch. 284, L. 1967; Sec. 89-3314, R.C.M. 1947; R.C.M. 1947, 89-3313, 89-3314.

76-5-1105. Division of work into parts. Whenever any city, town, or county has begun a water conservation or flood control system, or both, under this part, the council, board, or other governing body shall have the power to divide the work into parts, sections, or districts; to omit parts of said work; and to contract for any part or section separately and proceed therewith the same as if the entire work or improvements were contracted for, done, or made.

History: En. Sec. 11, Ch. 272, L. 1965; amd. Sec. 11, Ch. 284, L. 1967; R.C.M. 1947, 89-3311.

76-5-1106. Requirements to change project boundaries. The boundaries of a project once established shall not be extended without the vote of a majority of the electors residing in the area proposed to be annexed. Such electors are to be determined, and such election is to be held in accordance with the provisions of 76-5-1117.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).

76-5-1107. Direction and construction responsibility of state or federal government — local role. This part contemplates that the actual direction of the project and the doing of the work in connection therewith is assumed by either the state or the federal government and the city, town, or county provides and assumes the cost of necessary right-of-way over and above such contributions in that regard as the federal government may choose to make. Under such limitation, all appropriate portions of this part shall apply.

History: En. Sec. 6, Ch. 272, L. 1965; amd. Sec. 5, Ch. 284, L. 1967; R.C.M. 1947, 89-3306.

76-5-1108. Acquisition of property. (1) Cities, towns, and counties may acquire by gift, purchase, or condemnation and appropriation private property within the limits of the project, including the right to cross railroad right-of-way and property and highway right-of-way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this part and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted, or otherwise improved under the provisions of this part.

(2) All provisions of the laws of Montana relating to the condemnation of lands for public purposes shall apply to the provisions thereof insofar as applicable.

History: En. Sec. 3, Ch. 272, L. 1965; amd. Sec. 3, Ch. 284, L. 1967; R.C.M. 1947, 89-3303.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

76-5-1109. Contracts for use of railroads and highways. A city, town, or county may contract with a railroad company or with the department of transportation for the use of railroad or highway rights-of-way and embankments and other railroad or highway property which can be utilized by the city, town, or county for the purpose of water conservation or flood control or protection as part of its water conservation or flood control system, or both, for a period not exceeding 99 years.

History: En. Sec. 10, Ch. 272, L. 1965; amd. Sec. 10, Ch. 284, L. 1967; amd. Sec. 207, Ch. 316, L. 1974; R.C.M. 1947, 89-3310; amd. Sec. 3, Ch. 512, L. 1991.

76-5-1110. Cooperation with governmental, public, and private agencies. (1) Cities, towns, and counties may in accordance with the provisions of this part:

(a) accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding the construction and maintenance of water conservation and flood control projects; and

(b) cooperate and contract with the state or federal government or any department or agency thereof in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, and use of water.

(2) Cities, towns, and counties may also enter into agreement with the federal government to maintain levees, dikes, or other construction and to do all other acts required by the federal government in maintaining the work when completed.

History: En. Secs. 4, 7, Ch. 272, L. 1965; amd. Secs. 4, 6, Ch. 284, L. 1967; R.C.M. 1947, 89-3304, 89-3307(part).

76-5-1111. Apportionment of costs. (1) The cost of all right-of-way acquired by purchase or condemnation together with any other property rights which may be required in furtherance of such projects, may be borne by the city, town, or county.

(2) The work of actual construction and the cost thereof may be borne by the federal government.

History: En. Sec. 5, Ch. 272, L. 1965; R.C.M. 1947, 89-3305.

76-5-1112. Sources of funds for cost of acquiring right-of-way and other costs. (1) The council, board, or governing body shall have power to allocate a portion of the street or road fund, as the case may be, for the purpose of acquiring right-of-way or the operation and maintenance of completed projects.

(2) Cities, towns, and counties in furtherance of such water conservation and flood control projects may accept contributions to enable them to pay for necessary right-of-way.

(3) The council, board of county commissioners, or other governing body shall also have the authority to receive and accept appropriations and contributions from any source of either money or property or other things of value to be held, used, and applied for the purposes provided in this part.

History: (1)En. Sec. 8, Ch. 272, L. 1965; amd. Sec. 7, Ch. 284, L. 1967; Sec. 89-3308, R.C.M. 1947; (2)En. Sec. 7, Ch. 272, L. 1965; amd. Sec. 6, Ch. 284, L. 1967; Sec. 89-3307, R.C.M. 1947; (3)En. Sec. 9, Ch. 284, L. 1967; Sec. 89-3309.1, R.C.M. 1947; R.C.M. 1947, 89-3307(part), 89-3308, 89-3309.1(part).

76-5-1113. Special assessments for operation and maintenance authorized. (1) Any city, town, or county that shall establish a water conservation or flood control system, or both, pursuant to this part may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area benefiting from such system.

(2) Such special assessments for the operation and maintenance of any system authorized by this part shall be levied as are other special improvement levies as required by law.

History: En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967; R.C.M. 1947, 89-3309(part).

Cross-References

Special improvement district assessments, Title 7, ch. 12, part 41.

76-5-1114. Determination of assessment. (1) The special assessment shall be:

(a) levied against each lot or parcel of land in the benefited area for that portion of the money required which its area bears to the total area of all of the lands to be assessed; or

(b) at the option of the governing body of the city, town, or county, as the case may be, based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said benefited area; in which case each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

(2) However, where the benefited area lies in more than one county or lies both within a county and also a city or town, the same method of assessment shall be used for each governing body.

History: En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967; R.C.M. 1947, 89-3309(part).

76-5-1115. Fees and charges authorized. Cities, towns, and counties may for the purpose of providing funds for the operation and maintenance of completed projects fix, maintain, and collect fees, rents, tolls, and other charges for services rendered or facilities provided.

History: En. Sec. 9, Ch. 284, L. 1967; R.C.M. 1947, 89-3309.1(part).

76-5-1116. Determination of fees and charges. (1) In fixing such rate, fee, toll, or rent for water furnished for household use, domestic use, irrigation use, industrial use, and municipal use and for water used for streamflow stabilization, the governing body shall charge a fee sufficient to pay the proportionate share of the repairs, maintenance, and operating expenses as such use bears in economic value to the total economic value of the total use of said facilities of the project or projects. The economic value is to be determined by the governing body.

(2) For the benefits received by areas within the boundaries of the project or projects for flood prevention, flood control, and pollution abatement, the governing body shall determine a reasonable valuation or charge, which valuation or charge shall be certified by them to the county commissioners prior to the time general taxes are levied and assessed. It shall be the obligation of the county commissioners to levy a special assessment as provided for in 76-5-1113 and 76-5-1114 against such area or areas sufficient to provide revenues for the repairs, maintenance, and operating expenses of the project.

(3) For recreation use the governing body shall first determine the share of the costs of operation, repairs, and depreciation to be charged against such uses and from this figure shall subtract the estimated amount of fees and tolls collected for such uses. The deficiency, if any, shall be certified to the county commissioners in the same way as the charges for flood prevention, flood control, etc., and special assessments shall be levied by the county commissioners in the manner set out herein.

History: En. Sec. 9, Ch. 284, L. 1967; R.C.M. 1947, 89-3309.1(part).

76-5-1117. Bonds authorized — procedure. Cities, towns, and counties are authorized to contract indebtedness and to issue special improvement district or rural improvement district bonds to provide funds for the payment of the cost of improvements contemplated by this part by following the procedures established for the issuance of such bonds under the provisions of Title 7, chapter 12, part 42, as to cities and towns and Title 7, chapter 12, part 21, as to counties. Payment and security for the bonds shall be provided by following the following procedures:

(1) Tax assessments for the payment of the bonds shall be levied in accordance with Title 7, chapter 12, parts 41 and 42, or Title 7, chapter 12, part 21, as to cities and counties, respectively, or 76-5-1114(1).

(2) A revolving fund, to be pledged for the security of the bonds, must be established pursuant to the provisions of Title 7, chapter 12, part 42, as to cities and towns, and Title 7, chapter 12, part 21, as to counties, by the governing body authorizing the issuance of the bonds.

History: En. Sec. 12, Ch. 272, L. 1965; amd. Sec. 1, Ch. 239, L. 1971; R.C.M. 1947, 89-3312; amd. Sec. 15, Ch. 266, L. 1979; amd. Sec. 1, Ch. 209, L. 1981.

CHAPTER 6

OPEN SPACES

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76-6-207. Recording and description of easement.
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76-6-209. Easements to run with the land.
76-6-210. Enforcement.
76-6-211. Who may enforce easement.

Part 1
General Provisions

76-6-101. Short title. This chapter may be cited as the "Open-Space Land and Voluntary Conservation Easement Act".

History: En. Sec. 1, Ch. 337, L. 1969; amd. Sec. 1, Ch. 489, L. 1975; R.C.M. 1947, 62-601.

76-6-102. Findings and policy. The legislature finds that:

(1) the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments;

(2) the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living;

(3) this population spread and its attendant development are disrupting and altering the remaining natural areas, biotic communities, and geological and geographical formations and thereby providing the potential for the destruction of scientific, educational, aesthetic, and ecological values;

(4) the present and future rapid population spread throughout the state of Montana into its open spaces is creating serious problems of lack of open space and overcrowding of the land;

(5) to lessen congestion and to preserve natural, ecological, geographical, and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and scenic areas and to

conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state;

(6) the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state;

(7) the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and

(8) the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.

History: En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part).

76-6-103. Purposes. In accordance with the findings in 76-6-102, the legislature states that the purposes of this chapter are to:

(1) authorize and enable public bodies and certain qualifying private organizations voluntarily to provide for the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest;

(2) provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years; and

(3) encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this chapter.

History: En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part).

76-6-104. Definitions. The following terms whenever used or referred to in this chapter shall have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Comprehensive planning" means planning for development and shall include:

(a) preparation of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development as a guide for long-range development;

(b) programming and financing plans for capital improvements;

(c) coordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and

(d) preparation of regulatory and administrative measures in support of the foregoing.

(2) "Conservation easement" means an easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except

as this right is expressly reserved in the instruments evidencing the easement or restriction.

(3) "Open-space land" means any land which is provided or preserved for:

(a) park or recreational purposes;

(b) conservation of land or other natural resources;

(c) historic or scenic purposes; or

(d) assisting in the shaping of the character, direction, and timing of community development.

(4) "Public body" means the state, counties, cities, towns, and other municipalities.

(5) "Qualified private organization" means a private organization:

(a) competent to own interests in real property;

(b) which qualifies and holds a general tax exemption under the federal Internal Revenue Code, section 501(c); and

(c) whose organizational purposes are designed to further the purposes of this chapter.

(6) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

History: En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

76-6-105. Construction of chapter. (1) Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

(2) This subsection shall not be construed to imply that any easement, covenant, condition, or restriction which does not have the benefit of this chapter shall on account of any provisions hereof be unenforceable. Nothing in this chapter shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain, or otherwise and to use land for public purposes.

History: (1)En. Sec. 9, Ch. 337, L. 1969; Sec. 62-609, R.C.M. 1947; (2)En. 62-618 by Sec. 14, Ch. 489, L. 1975; Sec. 62-618, R.C.M. 1947; R.C.M. 1947, 62-609(part), 62-618.

76-6-106. Acquisition and designation of real property by public body. To carry out the purposes of this chapter, any public body may:

(1) acquire by purchase, gift, devise, bequest, or grant title to or any interests or rights in real property, including land and water, that will provide a means for the preservation or provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest, or both;

(2) designate any real property, including land and water, in which it has an interest to be retained and used for the preservation and provision of significant open-space land or the preservation of native plants or animals,

biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interests, or both.

History: En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; R.C.M. 1947, 62-604(part).

76-6-107. Conversion or diversion of open-space land. (1) No open-space land, the title to or interest or right in which has been acquired under this chapter, shall be converted or diverted from open-space land use unless the conversion or diversion is:

(a) necessary to the public interest;

(b) not in conflict with the program of comprehensive planning for the area; and

(c) permitted by the conditions imposed at the time of the creation of the conservation easement.

(2) Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land shall be substituted within a reasonable period not exceeding 1 year for any real property converted or diverted from open-space land use. Property substituted is subject to the provisions of this chapter.

History: En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(1).

76-6-108. Conveyance or lease of open-space lands. A grantee may convey or lease any real property it has acquired or which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land and which are consistent with the express terms and conditions of the grant unless the property is to be converted or diverted from open-space land use in accordance with the provisions of 76-6-107.

History: En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(2).

76-6-109. Powers of public bodies. (1) A public body shall have all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government such conditions imposed pursuant to federal laws as the public body may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities which may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any or all of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are so authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state or a city, town, other municipality, or county may:

(a) appropriate funds;

(b) levy taxes and assessments according to existing codes and statutes not to exceed 1 mill;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state; and

(d) exercise its powers under this chapter through a board or commission or through such office or officers as its governing body by resolution determines or as the governor determines in the case of the state.

History: En. Sec. 6, Ch. 337, L. 1969; R.C.M. 1947, 62-606.

76-6-110. Authorization and funding for planning commission. (1) The state, counties, cities, towns, or other municipalities in an urban area, acting jointly or in cooperation, are authorized to perform comprehensive planning for the urban area and to establish and maintain a planning commission for this purpose and related planning activities.

(2) Funds may be appropriated and made available for the comprehensive planning. Financial or other assistance from the federal government and any other public or private sources may be accepted and utilized for the planning.

History: En. Sec. 7, Ch. 337, L. 1969; R.C.M. 1947, 62-607.

Part 2

Conservation Easements

Part Cross-References

Servitudes and easements, Title 70, ch. 17, part 1.

76-6-201. Conservation easements in general. (1) Where a public body acquires under this chapter an interest in land less than fee, this acquisition shall be by conservation easement.

(2) A conservation easement may be applied to urban or nonurban land.

History: En. Secs. 3, 4, Ch. 337, L. 1969; amd. Secs. 3, 4, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part), 62-604(part).

76-6-202. Duration of conservation easements. Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than 15 years. An easement granted for a term of years may be renewed for a term of 15 or more years upon the execution of a new granting instrument by the parties.

History: En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

76-6-203. Types of permissible easements. Easements or restrictions under this chapter may prohibit or limit any or all of the following:

(1) structures—construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) landfill—dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(3) vegetation—removal or destruction of trees, shrubs, or other vegetation;

(4) loam, gravel, etc.—excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

(5) surface use—surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

(6) acts detrimental to conservation—activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

(7) subdivision of land—subdivision of land as defined in 76-3-103, 76-3-104, and 76-3-202;

(8) other acts—other acts or uses detrimental to such retention of land or water areas in their existing conditions.

History: En. 62-610 by Sec. 7, Ch. 489, L. 1975; R.C.M. 1947, 62-610; amd. Sec. 16, Ch. 266, L. 1979.

76-6-204. Acquisition of conservation easements by qualified private organizations. Any qualified private organization may acquire by a conservation easement, by purchase, or by gift, devise, bequest, or grant title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or provision of permanent significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest.

History: En. 62-611 by Sec. 8, Ch. 489, L. 1975; R.C.M. 1947, 62-611.

76-6-205. Assignability of easements. For the purposes of this chapter, all conservation easements shall be assignable unless the instrument of conveyance or ownership expressly stipulates otherwise. No conservation easement shall be unenforceable on account of the benefit being assignable or being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership. The assignees must be qualified under the terms of this chapter to hold a conservation easement.

History: En. 62-613 by Sec. 10, Ch. 489, L. 1975; R.C.M. 1947, 62-613.

76-6-206. Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review prior to recording by the appropriate local planning authority for the county within which the land lies. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have 90 days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area. Such comments will not be binding on the proposed grantor or grantee but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority or the local planning authority has indicated in writing it will have no comments or 90 days have elapsed, whichever occurs first.

History: En. 62-614 by Sec. 11, Ch. 489, L. 1975; R.C.M. 1947, 62-614.

Cross-References

Local planning and zoning, Title 76, ch. 2.

76-6-207. Recording and description of easement. (1) All conservation easements shall be duly recorded in the county where the land lies so as to effect their titles in the manner of other conveyances of interest in land and shall describe the land subject to said conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries.

(2) The county clerk and recorder shall upon recording cause a copy of the conservation easement to be placed in a separate file within the office of the county clerk and recorder and shall cause a copy of the conservation easement to be mailed to the department of revenue.

History: En. 62-615 by Sec. 12, Ch. 489, L. 1975; R.C.M. 1947, 62-615.

Cross-References

Procedure to record documents, 7-4-2617.

76-6-208. Taxation of property subject to conservation easement. (1) Assessments made for taxation on property subject to a conservation easement either in perpetuity or for a term of years, where a public body or a qualifying private organization holds the conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used. The minimum assessed value for land subject to an easement conveyed under this chapter may not be less than the actual assessed value of such land in calendar year 1973. Any land subject to such easement may not be classified into a class affording a lesser assessed valuation solely by reason of the creation of the easement. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.

(2) Expiration of an easement granted for a term of years shall not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than 15 days after the date of expiration.

History: En. Sec. 8, Ch. 337, L. 1969; amd. Sec. 6, Ch. 489, L. 1975; R.C.M. 1947, 62-608.

Cross-References

Assessment procedure, Title 15, ch. 8.

76-6-209. Easements to run with the land. The provisions of 70-17-202 and 70-17-203(1) and (2) notwithstanding, for the purposes of this chapter, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership.

History: **En. 62-612 by Sec. 9, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part).**

76-6-210. Enforcement. (1) Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance.

(2) No conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement or because such easement is an easement in gross.

History: **En. 62-612, 62-616 by Secs. 9, 13, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part), 62-616.**

Cross-References

Injunctions, Title 27, ch. 19.

76-6-211. Who may enforce easement. (1) The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto.

(2) Public bodies holding conservation easements shall enforce the provisions of these easements.

History: **(1)En. Sec. 1258, Civ. C. 1895; re-en. Sec. 4515, Rev. C. 1907; re-en. Sec. 6757, R.C.M. 1921; Cal. Civ. C. Sec. 809; Field Civ. C. Sec. 253; re-en. Sec. 6757, R.C.M. 1935; Sec. 67-609, R.C.M. 1947; redes. 62-617 by Sec. 15, Ch. 489, L. 1975; Sec. 62-617, R.C.M. 1947; (2)En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; Sec. 62-604, R.C.M. 1947; R.C.M. 1947, 62-604(part), 62-617.**

CHAPTERS 7 AND 8

RESERVED

CHAPTER 9

SHOOTING RANGES

Part 1 — Protection of Shooting Range Location and Investments

76-9-101. Policy.
76-9-102. Prohibitions.
76-9-103. Planning — effect on shooting ranges.
76-9-104. Zoning — effect on shooting ranges.
76-9-105. Closure of shooting ranges — limitations — relocation cost.

Part 1

Protection of Shooting Range Location and Investments

76-9-101. Policy. It is the policy of the state of Montana to provide for the health, safety, and welfare of the citizens of the state by promoting the safety and enjoyment of the shooting sports among the citizens of the state and by protecting the locations of and investment in shooting ranges for shotgun, archery, rifle, and pistol shooting.

History: En. Sec. 1, Ch. 415, L. 1991.

76-9-102. Prohibitions. (1) Standards adopted by a state agency or unit of local government to limit levels of noise that may occur in the outdoor atmosphere may not apply to shooting ranges.

(2) Standards adopted by a state agency or unit of local government promulgated pursuant to Title 75 and concerning pollution by lead, copper, or brass may not limit or prohibit the operation of a shooting range because of lead, copper, or brass deposition resulting from shooting activities.

History: En. Sec. 2, Ch. 415, L. 1991.

76-9-103. Planning — effect on shooting ranges. The laws of this state concerning planning, master plans, or comprehensive plans may not be construed to authorize an ordinance, resolution, or rule that would:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but it may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges.

History: En. Sec. 3, Ch. 415, L. 1991.

76-9-104. Zoning — effect on shooting ranges. A planning district master plan, recommendation, resolution, rule, or zoning designation may not:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but it may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges.

History: En. Sec. 4, Ch. 415, L. 1991.

76-9-105. Closure of shooting ranges — limitations — relocation cost. (1) Except as provided in subsection (2), an established shooting range may not be prevented from operation by a state agency, unit of local government, or court unless the range presents a clear and provable safety hazard to the adjacent population.

(2) If a pressing public need exists because of incompatibility with nearby population or land use, an established shooting range may be relocated by an agency of state government, unit of local government, or court, but only if all of the following conditions are met:

(a) pressing public need is documented through hearings, testimony, and a clear and precise statement of need by the agency, unit of local government, or court involved;

(b) the agency or unit of local government obtaining the closure pays the appraised cost of the land together with improvements to the operators of the shooting range. In return the shooting range operators shall relinquish their interest in the property to the agency or unit of local government obtaining the closure.

(3) If a shooting range presents a clear and provable safety hazard to adjacent population, the range may be suspended from operation if:

(a) reasonable notice and opportunity to respond are afforded the range operators; and

(b) reasonable opportunity is afforded the range operators to correct any safety defects.

History: En. Sec. 5, Ch. 415, L. 1991.

CHAPTER 10

RESERVED

CHAPTER 11

NATURAL RESOURCES IN GENERAL

Part 1 — Protection From Fire

76-11-101. Protection of natural resources from fire.
76-11-102. Cooperative agreements with owners and lessees of land for fire protection and conservation.

Part 2 — Soil Survey and Mapping Program

76-11-201. Short title.
76-11-202. Purpose.
76-11-203. Direction to state agencies.
76-11-204. Professional and technical assistance.

Chapter Cross-References

Natural Resource Information System, Title 90, ch. 15.

Part 1

Protection From Fire

76-11-101. Protection of natural resources from fire. The department of state lands, under such rules as the state board of land commissioners may provide, shall protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for such purpose, in emergencies, may employ men and incur other expenses when necessary.

History: En. Sec. 14, Ch. 147, L. 1909; re-en. Sec. 1836, R.C.M. 1921; re-en. Sec. 1836, R.C.M. 1935; amd. Sec. 1, Ch. 220, L. 1955; amd. Sec. 105, Ch. 253, L. 1974; amd. Sec. 18, Ch. 397, L. 1977; R.C.M. 1947, 81-1415; amd. Sec. 1, Ch. 529, L. 1981.

76-11-102. Cooperative agreements with owners and lessees of land for fire protection and conservation. (1) For the purpose of more adequately promoting and facilitating the cooperation, financial and otherwise, between the state and all of the public and private agencies or individuals therein, the department of state lands may cooperate with owners or lessees of farm, range, forest, watershed, or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing thereon and also in the conservation and perpetuation of such lands and resources, including the prevention of soil erosion and the regulation of stream flow.

(2) The state treasurer is hereby authorized to receive money that may be appropriated or allotted for the purposes named in subsection (1) by the state, counties, municipalities, the United States government or any department thereof, or other organization or individual.

History: (1)En. Sec. 9, Ch. 179, L. 1925; re-en. Sec. 1830.9, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1947; amd. Sec. 101, Ch. 253, L. 1974; Sec. 81-1409, R.C.M. 1947; (2)En. Sec. 10, Ch. 179, L. 1925; re-en. Sec. 1830.10, R.C.M. 1935; amd. Sec. 216, Ch. 147, L. 1963; Sec. 81-1410, R.C.M. 1947; R.C.M. 1947, 81-1409, 81-1410; amd. Sec. 1, Ch. 529, L. 1981.

Part 2

Soil Survey and Mapping Program

Part Cross-References

Soil Survey Advisory Council, 2-15-3306.

76-11-201. Short title. This part may be cited as the "Montana Soil Survey Act".

History: En. Sec. 1, Ch. 358, L. 1979.

76-11-202. Purpose. (1) The legislature finds that the soils of the state of Montana are one of its most basic and precious natural resources and that detailed knowledge of soil capabilities and adaptability is essential for:

(a) making wise land use decisions;

(b) preparing plans for cities, towns, counties, planning boards, farmers, foresters, industrial developers, and residential developers;

(c) locating and designing buildings, highways, reservoirs, and recreation areas; and

(d) protecting our forest, range, and agricultural lands.

(2) Pursuant to these findings, it is the intention of the legislature to accelerate the survey and mapping of the state's soil resources, to set a goal of completing the soil survey and mapping program.

History: En. Sec. 2, Ch. 358, L. 1979.

76-11-203. Direction to state agencies. (1) The department of natural resources and conservation shall develop a plan for completing the soil survey and mapping program in cooperation with and according to the standards set forth by the national cooperative soil survey program and the Montana state agricultural experiment station.

(2) The soil survey plan must identify all projected local participation, all funds available from state and federal agencies, including planning grants, and any and all additional equipment, personnel, facilities, supplies, maps and other material necessary to complete the soil survey and mapping program.

(3) The soil survey plan must determine geographic areas without modern soil survey information and must establish in cooperation with the national cooperative soil survey program priorities for completing soil surveys based upon the needs of the geographic areas.

(4) The department of natural resources and conservation shall oversee the plan for completing the soil survey and mapping program and shall report annually on its progress to the governor not later than January 1 of each year.

History: En. Sec. 3, Ch. 358, L. 1979; amd. Sec. 52, Ch. 112, L. 1991; amd. Sec. 46, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 at end of (4) deleted "and, as provided in 5-11-210, to the legislature"; and made minor changes in style.

76-11-204. Professional and technical assistance. The department of natural resources and conservation, with the advice and recommendations of the advisory council provided for in 2-15-3306, may use such professional, technical, and legal counsel and assistance as it determines necessary to develop and implement a soil survey plan to accelerate the completion of the national cooperative soil survey and mapping program in Montana.

History: En. Sec. 5, Ch. 358, L. 1979.

CHAPTER 12

WILD AND SCENIC RESOURCES

Part 1 — Natural Areas

76-12-101. Short title.
76-12-102. Legislative findings.
76-12-103. Statement of policy.
76-12-104. Definitions.
76-12-105. Repealed.
76-12-106. Repealed.
76-12-107. Methods of bringing land under part.
76-12-108. Acquisition of lands.
76-12-109. Report to legislature.
76-12-110. Restriction on condemnation or development of natural areas.
76-12-111. Continuation of existing uses.
76-12-112. Duties of board — administrative rules and hearing requirements.
76-12-113. Repealed.
76-12-114. Repealed.
76-12-115. Consultation with interested parties.
76-12-116. Files and proceedings open to public.
76-12-117. Application of more restrictive provisions.
76-12-118 through 76-12-120 reserved.
76-12-121. Duties of department — plan for natural areas system.
76-12-122. Terminated.
76-12-123. Natural areas account.

Part 1
Natural Areas

76-12-101. Short title. This part shall be known and may be cited as the "Montana Natural Areas Act of 1974".

History: En. 81-2701 by Sec. 1, Ch. 254, L. 1974; R.C.M. 1947, 81-2701.

76-12-102. Legislative findings. The legislature finds that:

(1) in the expanses of Montana there are natural areas possessing significant scenic, educational, scientific, biological, and/or geological values or areas possessing these characteristics to a degree promising their restoration to a natural state;

(2) since the development of these areas is an irreversible commitment of a finite and diminishing resource of fundamental importance, selected areas should be preserved for the benefit of this and future generations;

(3) currently there are no regulations promulgated by the state or local governments to insure adequate protection for natural areas;

(4) it is necessary to establish a process for developing a system of natural areas and to encourage public and private participation in the establishment of a natural areas system for the benefit of the citizens of the state; and

(5) designations of natural areas should first consider protected natural features in publicly owned and privately dedicated lands, such as nature preserves, natural areas, parks, and wilderness areas, and should avoid duplication of these features.

History: En. 81-2702 by Sec. 2, Ch. 254, L. 1974; R.C.M. 1947, 81-2702(part); amd. Sec. 1, Ch. 460, L. 1987.

76-12-103. Statement of policy. (1) It is the intention of the legislature to establish a system for the protection of natural or potentially natural areas in order to preserve their natural ecosystem integrity in perpetuity.

(2) In this connection, the legislature recognizes the fact that the school trust lands are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of the state; that it is the duty of the board of land commissioners to administer this trust so as to secure the largest measure of legitimate and reasonable advantage to the state; and hereby declares the preservation of natural areas, whether trust or other lands, for the enjoyment and inspiration of future generations to be an object worthy of legislative action helpful to the well-being of the people of the state and also declares that the preservation of natural areas on state trust land has sufficient value to present and future education to meet the state's obligation for the disposition and utilization of trust lands as specified in the Enabling Act.

History: En. 81-2702 by Sec. 2, Ch. 254, L. 1974; R.C.M. 1947, 81-2702(part).

76-12-104. Definitions. (1) "Board" means the board of land commissioners.

(2) "Department" means the department of state lands.

(3) "Natural area" means an area of land which must generally appear to have been affected primarily by the forces of nature with the visual aspects

of human intrusion not dominant and also must have one or more of the following characteristics:

(a) an outstanding mixture or variety of vegetation, wildlife, water resource, landscape, and scenic values;

(b) an important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational, or ecological purposes.

(4) "Natural areas system" means the composite of lands in the state that exhibit the characteristics of natural areas and that have been designated by the board or dedicated or otherwise protected and managed as natural areas.

(5) "Register" means the Montana register of natural areas established under 76-12-121.

History: En. 81-2703 by Sec. 3, Ch. 254, L. 1974; R.C.M. 1947, 81-2703; amd. Sec. 2, Ch. 460, L. 1987.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner deleted the definition of Council because 2-15-3203, which established the Natural Areas Advisory Council, terminated June 30, 1993. The definition was therefore obsolete.

76-12-105. Repealed. Sec. 11, Ch. 460, L. 1987.

History: En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part).

76-12-106. Repealed. Sec. 11, Ch. 460, L. 1987.

History: En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part).

76-12-107. Methods of bringing land under part. A natural area, as defined in 76-12-104, may become subject to the provisions of this part in any of the following ways:

(1) designation by the board on lands controlled by the board;

(2) designation by the legislature on lands owned by the state of Montana;

(3) acquisition by the board by purchase with consent of the property owner of sufficient interests in private property to protect the natural area; provided, however, that transfer of surface property or development rights shall not alter the rights attending the subsurface estate if owned by another party;

(4) gift accepted by the board under the authority of 77-1-213, including conservation easements, provided that lands accepted must be protected and managed as natural areas and money accepted must be used in accordance with the purposes of this part;

(5) trade of state-owned trust land for a natural area on federal, county, or private land, provided, however, that lands received in exchange for trust lands should be equal in value to the exchanged trust land and as closely as possible equal in area; or

(6) registration of land by the department, following appropriate documentation and owner consent, that has been designated, dedicated, or otherwise protected as a natural area by the owner, including a private landowner, public interest group, or other land management agency.

History: En. 81-2704 by Sec. 4, Ch. 254, L. 1974; R.C.M. 1947, 81-2704; amd. Sec. 4, Ch. 460, L. 1987.

Cross-References

Exchanges of land, Title 77, ch. 2, part 2.

76-12-108. Acquisition of lands. Subject to the limits of available appropriations, the board is authorized to acquire interests to lands by any lawful means for the purpose of designating natural areas; provided that the board shall exercise the power of eminent domain only in specific instances where authorized by the legislature.

History: En. 81-2707 by Sec. 7, Ch. 254, L. 1974; R.C.M. 1947, 81-2707.

Cross-References

Preservation of cultural resources, Art. IX, sec. 4, Mont. Const.

Eminent domain, Title 70, ch. 30.

76-12-109. Report to legislature. The board may, as provided in 5-11-210, submit to each legislature a report on its designation and acquisition activities.

History: En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part); amd. Sec. 53, Ch. 112, L. 1991; amd. Sec. 47, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 after "board" substituted "may" for "shall".

76-12-110. Restriction on condemnation or development of natural areas. Natural areas acquired or designated in accordance with the provisions of this part are protected from condemnation or other development adversely affecting the integrity of the natural area until legislative action is taken specifically authorizing the condemnation or development.

History: En. 81-2708 by Sec. 8, Ch. 254, L. 1974; R.C.M. 1947, 81-2708(1).

Cross-References

Eminent domain, Title 70, ch. 30.

Signs prohibited near natural areas, 75-15-113(8).

76-12-111. Continuation of existing uses. Land uses on the designated or acquired natural area in existence at the time of designation or acquisition by the board may continue under appropriate leases or agreements. All such land uses shall be controlled under regulations established by the board under 76-12-112.

History: En. 81-2708 by Sec. 8, Ch. 254, L. 1974; R.C.M. 1947, 81-2708(2).

76-12-112. Duties of board — administrative rules and hearing requirements. (1) The board shall, after at least one public hearing, promulgate comprehensive regulations for the protection of acquired and designated natural areas within its jurisdiction. Such regulations shall be consistent with the intent of this part and shall be promulgated and enforced so as to protect the qualities of the natural areas. Special attention shall be given to protecting areas from recreational overuse.

(2) The regulations shall provide for meetings by the board for the receipt of testimony on the department's proposed designation of natural areas. No area shall be designated by the board unless the opportunity for public testimony has been afforded at meetings provided for in the regulations and positive notification of all involved landowners and lessees has been made.

(3) The board shall consider the department's recommendations as provided in 76-12-121(4) and issue a statement of its decision.

History: En. 81-2709 by Sec. 9, Ch. 254, L. 1974; R.C.M. 1947, 81-2709; amd. Sec. 5, Ch. 460, L. 1987.

Cross-References

Application of Montana Administrative Procedure Act, Title 2, ch. 4.

76-12-113. Repealed. Sec. 11, Ch. 460, L. 1987.

History: En. 81-2710 by Sec. 10, Ch. 254, L. 1974; R.C.M. 1947, 81-2710(part).

76-12-114. Repealed. Sec. 11, Ch. 460, L. 1987.

History: En. 81-2710 by Sec. 10, Ch. 254, L. 1974; R.C.M. 1947, 81-2710(part).

76-12-115. Consultation with interested parties. The department shall consult with citizen organizations, organizations representing Montana's basic resource industries, and other interested state agencies in the administration of this part.

History: En. 81-2711 by Sec. 11, Ch. 254, L. 1974; R.C.M. 1947, 81-2711(part); amd. Sec. 8, Ch. 460, L. 1987.

76-12-116. Files and proceedings open to public. All files and proceedings under this part shall be open to the public.

History: En. 81-2711 by Sec. 11, Ch. 254, L. 1974; R.C.M. 1947, 81-2711(part).

76-12-117. Application of more restrictive provisions. A designated natural area that is or shall become a part of a state park, wildlife refuge, or similar area shall be subject to the provisions of this part and the laws under which the other areas may be administered, and in the case of conflict between the provisions of these laws, the more restrictive provisions shall apply.

History: En. 81-2712 by Sec. 12, Ch. 254, L. 1974; R.C.M. 1947, 81-2712.

76-12-118 through 76-12-120 reserved.

76-12-121. Duties of department — plan for natural areas system. The department may:

(1) identify the existing and potential natural areas on lands under its jurisdiction and annually prepare a register listing the existing natural areas on private, county, state, and federal land;

(2) prepare and implement a biennial administrative plan for a natural areas system that will:

(i) assure equitable representation of the diversity of natural area types that are found to occur on private, county, state, and federal lands; and

(ii) include identification of important natural area needs, viable methods to make eligible lands a part of the natural areas system, responsible management entities, goals for establishing natural areas, obligations of cooperating agencies, organizations, and individuals, and administrative procedures for registering natural areas with the department;

(3) consider the concerns and comments of the board and the public in preparing and implementing the administrative plan described in subsection (2);

(4) make recommendations to the board for designation of natural areas on state lands and for acquisition of interests in other lands for the preservation of natural areas;

(5) provide that designated natural areas on state lands are available for multiple uses, including but not limited to grazing, recreation, and snowmobiling, if such uses are consistent with the state's obligations under The

Enabling Act and do not interfere with the management or integrity of the natural area; and

(6) provide that the management of natural areas on state lands includes provisions for weed control consistent with 7-22-2151. The department of state lands assumes any levy under 7-22-2142 in natural areas; the lessee is not responsible for fire suppression costs in natural areas, and the lessee is not responsible for keeping natural areas free of garbage and debris.

History: En. Sec. 3, Ch. 460, L. 1987.

Compiler's Comments

Code Commissioner Correction: In (3) the Code Commissioner deleted a reference to the Council because 2-15-3203, which established the Natural Areas Advisory Council, terminated June 30, 1993. The reference was therefore obsolete.

76-12-122. Terminated. Sec. 15, Ch. 460, L. 1987.

History: En. Sec. 7, Ch. 460, L. 1987.

76-12-123. Natural areas account. (1) There is a natural areas special revenue account within the state special revenue fund established in 17-2-102.

(2) The natural areas account may receive funds from any source as gifts.

(3) The department may spend funds accepted as gifts in accordance with the purposes of this part, including administration of a natural areas program. These funds, except funds used for administration of a program, are statutorily appropriated, as provided in 17-7-502.

History: En. Sec. 9, Ch. 460, L. 1987; amd. Sec. 10, Ch. 628, L. 1989.

CHAPTER 13

TIMBER RESOURCES

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Chapter Cross-References

County forests, Title 7, ch. 8, part 26.

Timber trespass — treble damages, 70-16-107, 70-16-108.

Timber resources on state lands, Title 77, ch. 5.

Functions of Department of Commerce respecting forestry, 90-1-102.

Part 1
Protection of Forest Resources

76-13-101. Purpose. (1) It is the purpose of this part and part 2 to provide for the protection and conservation of forest resources, range, and water; the regulation of streamflow; and the prevention of soil erosion. It is further the purpose of this part and part 2 to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies which are associated in such work.

(2) To achieve the conservation of forest and watershed resources, the legislature encourages the use of best management practices in timber sale planning, associated road construction and reconstruction, timber harvesting, site preparation, and related activities and establishes a process to ensure that information on best management practices is provided to owners and operators engaged in forest practices on private land.

History: En. 28-101.1 by Sec. 1, Ch. 253, L. 1974; R.C.M. 1947, 28-101.1; amd. Sec. 1, Ch. 423, L. 1989.

76-13-102. Definitions. Unless the context requires otherwise, in this part and part 2, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana Constitution.

(2) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

(3) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(4) "Forest fire" means a fire burning uncontrolled on forest lands.

(5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.

(6) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and wherein forest fire protection is provided through the medium of an agency recognized by the board.

(7) "Forest fire season" means the period of each year beginning on May 1 and ending on September 30, inclusive.

(8) "Forest land" means land which has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(9) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash.

(b) The term does not include activities for the purpose of:

(i) the operation of a nursery or Christmas tree farm;

(ii) the harvest of Christmas trees;

(iii) the harvest of firewood; or

(iv) the cutting of trees for personal use by an owner or operator.

(10) "Lands" for conservation purposes means all forest lands within this state which are officially classified by the department as forest lands under 76-13-107.

(11) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

(12) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(13) "Person" means an individual, corporation, partnership, or association of any kind.

(14) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the board as giving adequate fire protection to forest lands in accordance with rules adopted by the board.

(15) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area.

History: En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971; amd. Sec. 2, Ch. 253, L. 1974; amd. Sec. 1, Ch. 397, L. 1977; R.C.M. 1947, 28-103(part); amd. Secs. 1, 2, Ch. 529, L. 1981; amd. Sec. 2, Ch. 423, L. 1989.

76-13-103. Applicability. This part and part 2 apply to all forest lands within this state which are officially classified by the board as forest lands according to the definition of forest land in 76-13-102.

History: En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959; amd. Sec. 3, Ch. 253, L. 1974; R.C.M. 1947, 28-104(2).

76-13-104. Functions of department. (1) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.

(2) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(3) The department shall require an owner or operator to provide a notification prior to conducting forest practices as provided in 76-13-131, shall adapt as necessary any procedure used for notification with respect to an agreement under 76-13-408 to ensure that the operator provides information on the location of the forest practices in relation to watershed features, and shall conduct onsite consultations as provided for in 76-13-132.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(1), (4), (6); amd. Sec. 4, Ch. 529, L. 1981; amd. Sec. 3, Ch. 423, L. 1989.

Cross-References

Exchange of timbered, cut-over, or burned-over lands, 77-2-211.

76-13-105. Protection of nonforest lands and improvements. Nonforest lands and improvements may be protected by the department when requested by the landowner at rates determined by the department.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(5).

76-13-106. Cooperation between department of state lands and county. The county governing body shall cooperate with the department to the extent legally permissible in providing means and methods of safeguarding the forest land lying within the state and in preventing fire nuisance thereon. The county governing body shall list forest lands under its jurisdiction with the department for forest protection. The money the state and counties become liable for under this section shall be paid from funds provided by law for the protection of the forest lands owned by the state and counties.

History: En. Sec. 22, Ch. 128, L. 1939; amd. Sec. 15, Ch. 253, L. 1974; amd. Sec. 10, Ch. 397, L. 1977; R.C.M. 1947, 28-122; amd. Sec. 5, Ch. 529, L. 1981.

76-13-107. Classification of forest lands. The department may classify the forest land areas of the state for which conservation and fire protection measures are reasonably required and change or modify the classification from time to time as in its judgment is proper.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(3).

76-13-108. Person responsible for performance of duties. (1) If the owner does not appear upon the public records as the holder of the legal title to the land or timber, he is nevertheless primarily responsible for the performance of the acts and duties imposed upon him by this part and part 2.

(2) Where the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by this part and part 2 is upon the owner of the timber.

(3) Where the state has title to forest lands within any organized forest protection district, it shall be considered as an owner and it shall list its lands and pay the assessments to the recognized agencies responsible for lands in such organized forest protection districts.

History: (1), (2)En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959; amd. Sec. 3, Ch. 253, L. 1974; Sec. 28-104, R.C.M. 1947; (3)En. Sec. 8, Ch. 128, L. 1939; Sec. 28-108, R.C.M. 1947; R.C.M. 1947, 28-104(1), 28-108.

76-13-109. Rules. The board may adopt and enforce through the department reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this part and part 2.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967; amd. Sec. 4, Ch. 253, L. 1974; amd. Sec. 2, Ch. 397, L. 1977; R.C.M. 1947, 28-105(2); amd. Sec. 6, Ch. 529, L. 1981.

76-13-110. Owner's right to board hearing. (1) An owner of forest land is entitled to a hearing before the board, after a request therefor, on any subject pertaining to the activities of the board, the department, or any recognized agency as agent of the department affecting the owner's property. A request for a hearing before the board may not have the effect of suspending the operations of the board, the department, or any agent of the department undertaken pursuant to this chapter, but upon the hearing, the board may terminate those operations if found unreasonable.

(2) A hearing pertaining to costs charged against the forest land of an owner for protection thereof, as provided in 76-13-201, must be requested on or before August 15 each year.

History: En. Sec. 4, Ch. 141, L. 1941; amd. Sec. 20, Ch. 253, L. 1974; amd. Sec. 11, Ch. 397, L. 1977; R.C.M. 1947, 28-129.

76-13-111. Permissible expenditures. (1) The following funds may be expended as directed by the department for fire prevention, detection, suppression and for forest range, water, and soil conservation:

(a) all moneys collected by county treasurers as assessments on forest lands for forest protection;

(b) moneys collected for the abatement of public nuisances;

(c) all fines collected, except those collected in a justice's court, for violations of this part or part 2;

(d) the state's share of the cooperative fire protection funds allocated by the federal government;

(e) any other funds provided for the purposes herein indicated.

(2) All other cooperative funds collected, appropriated, or allocated for the use of the department, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where those forest plantings are helpful, and funds for other cooperative work, may not be expended except for the specific purposes for which they were collected, appropriated, or allocated.

History: En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963; amd. Sec. 2, Ch. 30, L. 1971; amd. Sec. 16, Ch. 253, L. 1974; R.C.M. 1947, 28-123; amd. Sec. 47, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

76-13-112. Penalty for violation. Unless otherwise provided by this part or part 2, a person who violates this part or part 2 or any rule adopted by the board or department pursuant to this part or part 2 is guilty of a misdemeanor and shall be punished by a fine of not more than $500 or imprisonment in a county jail for not more than 6 months or both.

History: En. Sec. 27, Ch. 128, L. 1939; amd. Sec. 19, Ch. 253, L. 1974; R.C.M. 1947, 28-127.

76-13-113. Destruction of signs. Any person who shall destroy, deface, remove, injure, or disfigure any sign, placard, proclamation, order, warning, or notice issued by any federal, state, or forest protection agency under the provisions of this part or part 2 and erected or posted at any point in the state shall be guilty of a misdemeanor.

History: En. Sec. 20, Ch. 128, L. 1939; R.C.M. 1947, 28-120.

76-13-114. Disposition of fines. Fines collected in a court of the state under this part or part 2, except those collected in a justice's court, shall be transferred to the state treasurer for deposit in the agency fund. Whenever a person is convicted in any court of a violation of this part or part 2, the court may levy and collect as costs in the case the amount necessary to compensate the county for the expenditures made in and for the prosecution of the offender. These costs when collected, except those collected in a justice's court, shall be deposited by the court with the proper county treasurer for the benefit of the county.

History: En. Sec. 21, Ch. 128, L. 1939; amd. Sec. 14, Ch. 253, L. 1974; R.C.M. 1947, 28-121; amd. Sec. 34, Ch. 281, L. 1983; amd. Sec. 48, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

76-13-115 through 76-13-120 reserved.

76-13-121. Permit for burning required. During the forest fire season or an expansion thereof, a person may not ignite or set a forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or an open fire within forest lands without an official written permit to ignite or set the fire from the recognized protection agency for that protection area. A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom.

History: En. Sec. 14, Ch. 128, L. 1939; amd. Sec. 11, Ch. 253, L. 1974; amd. Sec. 7, Ch. 397, L. 1977; R.C.M. 1947, 28-114.

76-13-122. Failure to comply with permit. A person to whom a written permit is issued to set or ignite a fire within forest lands during the forest protection season shall comply strictly with the permit. A person who fails to comply with the permit, leaves the fire unattended, leaves the fire before it is totally extinguished, or negligently allows the fire to spread from or beyond the burning area defined by the permit is guilty of a misdemeanor. The department shall prescribe the form and substance of such permit.

History: En. Sec. 16, Ch. 128, L. 1939; amd. Sec. 12, Ch. 253, L. 1974; R.C.M. 1947, 28-116.

Cross-References

Penalty for misdemeanor, 46-18-212.

76-13-123. Failure to extinguish campfire. Any person who shall fail to extinguish any campfire set or ignited by him within any forest lands before leaving the same, who shall fail to extinguish any campfire used by him or left in his charge before leaving the same, or who shall negligently allow such fire to spread from the plot described in 76-13-121 shall be guilty of a misdemeanor.

History: En. Sec. 15, Ch. 128, L. 1939; R.C.M. 1947, 28-115.

Cross-References

Penalty for misdemeanor, 46-18-212.

Penalty for setting or leaving fire causing damage, 50-63-102.

Liability of offender for damages and costs, 50-63-103.

76-13-124. Throwing lighted materials. A person who throws or places any lighted cigarette, cigar, ashes, or other flaming or glowing substance that may start a fire in or near any forest material is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 128, L. 1939; amd. Sec. 8, Ch. 397, L. 1977; R.C.M. 1947, 28-117.

Cross-References

Penalty for misdemeanor, 46-18-212.

76-13-125. Spark arresters required. No person may use, drive, or operate within any forest lands any internal combustion engine that is not equipped with a modern, efficient, and adequate spark arrester and with modern, efficient devices to prevent the escape of sparks, coals, cinders, and other burning material from the exhaust of any such engine.

History: En. Sec. 18, Ch. 128, L. 1939; amd. Sec. 9, Ch. 397, L. 1977; R.C.M. 1947, 28-118.

76-13-126. Restrictions on sawdust piles. (1) Before each forest fire season, all persons, firms, or corporations creating or responsible for mill waste within the forest areas shall treat, dispose of, remove, or reduce the hazards created so that the accumulation of sawmilling waste does not constitute a fire hazard.

(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of sawlogs. However, a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with rules adopted by the department.

History: En. Sec. 19, Ch. 128, L. 1939; amd. Sec. 1, Ch. 222, L. 1955; amd. Sec. 1, Ch. 195, L. 1969; amd. Sec. 13, Ch. 253, L. 1974; R.C.M. 1947, 28-119.

76-13-127 through 76-13-130 reserved.

76-13-131. Notification prior to forest practices — department response. (1) An operator or, pursuant to subsection (3), an owner shall notify the department prior to conducting forest practices. The notification may be provided as part of the notification made with respect to an agreement under 76-13-408.

(2) (a) Except as provided in subsection (3), within 5 working days, but not exceeding 7 calendar days, of receiving notification of forest practices, the department shall mail to the operator and, if an address has been provided, to the owner:

(i) a receipt of notification;

(ii) information on best management practices for forestry;

(iii) information on conservation district permit requirements related to stream crossings; and

(iv) any other information the department believes would assist the operator or the owner with conducting forest practices.

(b) The receipt of notification must include a statement that:

(i) forest practices may proceed; or

(ii) an onsite consultation is required prior to conducting forest practices.

(3) (a) An owner may submit to the department a notice providing an annual, semiannual, or quarterly operating plan that indicates the estimated starting date of forest practices for each timber sale planned by the owner during the operating period. The plan must be submitted no less than 15 days before the beginning of the operating period covered.

(b) Upon receipt of an operating plan, the department may:

(i) meet with the owner to review the proposed timber sales, discuss watershed concerns, and schedule onsite consultations at appropriate sites; or

(ii) provide a receipt of notification, as described in subsection (2)(b), for individual timber sales.

(c) If the department requires an onsite consultation for any of the timber sales, it shall notify the owner of this requirement as soon as possible but no less than 10 calendar days prior to the estimated starting date of forest practices associated with the timber sale. The onsite consultation must then be scheduled according to the provisions of 76-13-132(2) through (4).

History: En. Sec. 4(1) thru (3), Ch. 423, L. 1989.

Cross-References

Fire hazard reduction agreement and bond, 76-13-408.

76-13-132. Onsite consultation. (1) The department shall make its decision on whether or not to require an onsite consultation based on whether:

(a) the proposed timber sale is in a high-priority location for watershed resources;

(b) a consultation could contribute to improved watershed management; and

(c) the department has sufficient resources to conduct the consultation.

(2) The department shall schedule an onsite consultation at a time mutually agreeable to the operator, the owner (if he can be contacted and wishes to participate), and the department. Unless otherwise agreeable to the operator and a participating owner, a consultation must be held no later than:

(a) 10 calendar days after the mailing of the notice by the department, if the site is accessible; or

(b) if the site is temporarily inaccessible due to road conditions, weather conditions, or other factors, 10 calendar days after the operator indicates the site is accessible.

(3) The onsite consultation must include representatives of the department, the operator, and, if the owner desires representation, the owner. Representatives of the department of health and environmental sciences, the department of fish, wildlife, and parks, and the local conservation district may also participate but must meet the consultation schedule established under 76-13-131(3)(c) or subsection (2) of this section.

(4) If the department and the operator are not able to schedule an onsite consultation within the time limits provided in subsection (2)(a) or (2)(b) or at another mutually agreeable time, the requirement for a consultation is terminated. The operator may then proceed with forest practices immediately upon the expiration of the time limits provided in subsection (2)(a) or (2)(b).

History: En. Sec. 4(4) thru (7), Ch. 423, L. 1989.

76-13-133. Purpose of onsite consultation — department responsibility. (1) The onsite consultation provided for in 76-13-132 is intended only for the purpose of providing information to owners and operators and does not confer upon the department or any other agency of state or local government authority to compel an owner or operator to undertake or refrain from undertaking specific management practices that are not otherwise regulated by law or rule.

(2) The department does not incur any obligation or liability by virtue of a decision to conduct or not conduct an onsite consultation.

(3) To the extent practicable, the department shall evaluate the application of forest practices as part of an onsite inspection, relating to the control of timber slash and debris, conducted under the provisions of Title 76, chapter 13, part 4.

History: En. Sec. 4(8), (9), (12), Ch. 423, L. 1989.

76-13-134. When additional notification required. (1) Except as provided in subsection (2), the department may require only one notification for each timber sale, even though multiple forest practices may be conducted.

(2) If an operator modifies his proposed forest practices in a manner that substantially alters the potential watershed disturbance, he shall submit a revised notification to the department.

History: En. Sec. 4(10), Ch. 423, L. 1989.

76-13-135. Emergency forest practices. Nothing in 76-13-131 through 76-13-135 precludes an operator from undertaking any forest practice in an emergency to prevent watershed damage or the loss of timber resources.

History: En. Sec. 4(11), Ch. 423, L. 1989.

Part 2

Provision of Fire Protection Services

76-13-201. Duty of owner to protect against fire. (1) An owner of forest land classified as such by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection adopted by the board.

(2) If the owner does not provide for the protection and suppression, the department may provide it at a cost to the landowner of not more than $30 for each landowner in the protection district and of not more than an additional 20 cents per acre per year for each acre in excess of 20 acres owned by each landowner in each protection district, as necessary to yield the amount of money provided for in 76-13-207. The owner of the land shall pay to the county treasurer of the county in which the land is situated the charge for the same approved by the department in accordance with this part and part 1.

(3) No other charges may be assessed those landowners participating except in cases of proven negligence on the part of the landowner or his agent.

History: En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955; amd. Sec. 1, Ch. 91, L. 1959; amd. Sec. 1, Ch. 148, L. 1967; amd. Sec. 1, Ch. 252, L. 1974; amd. Sec. 6, Ch. 253, L. 1974; amd. Sec. 4, Ch. 397, L. 1977; R.C.M. 1947, 28-109; amd. Sec. 1, Ch. 643, L. 1985; amd. Sec. 1, Ch. 360, L. 1991.

76-13-202. Means by which department may provide protection. The department may provide for forest fire protection of any forest lands through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(2).

76-13-203. Extension of the forest fire season. In the event of excessive or great fire danger, the period defined in 76-13-102(7) may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice.

History: En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971; amd. Sec. 2, Ch. 253, L. 1974; amd. Sec. 1, Ch. 397, L. 1977; R.C.M. 1947, 28-103(part).

76-13-204. Creation, annexation of land into, and dissolution of forest fire protection districts. (1) In accordance with the provisions of subsections (2) and (3), the board may create, annex land to, or dissolve forest fire protection districts.

(2) Before a district is created, land is annexed into a district, or a district is dissolved, the board shall hold a hearing in any county in which land affected by the proposed change is located.

(a) The department shall give notice at least 20 days in advance of the hearing to all property owners to be affected by the proposed change. Service of the notice may be made by certified mail to each affected property owner or by publication of the notice in a newspaper published or generally circulated in the county in which the hearing is to be held.

(b) The department shall report to the board the arguments made for and against the proposed change and shall make a recommendation to the board.

(3) (a) A forest fire protection district may not be created or dissolved unless approved in writing by a vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in the affected forest fire protection district.

(b) Land may not be annexed into a district unless approved by 51% of the owners representing at least 51% of the acreage to be annexed.

(4) Land annexed into a district may not be removed from that district unless that district is dissolved.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967; amd. Sec. 4, Ch. 253, L. 1974; amd. Sec. 2, Ch. 397, L. 1977; R.C.M. 1947, 28-105(1); amd. Sec. 1, Ch. 147, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 147 at beginning of (1) inserted "in accordance with the provisions of subsections (2) and (3)" and after "create" inserted "annex land to, or dissolve"; in (2), after "created", inserted "land is annexed into a district, or a district is dissolved" and at end substituted "land affected by the proposed change is located" for "the proposed district or a part thereof is included"; in (2)(a), at end of first sentence, substituted "change" for "district" and in second sentence, before "certified", deleted "registered or" and after "mail" inserted "to each affected property owner"; inserted (2)(b) requiring a Department report and recommendation; in (3)(a), after "created", inserted "or dissolved" and near end, before "forest", substituted "affected" for "proposed"; inserted (3)(b) requiring landowner approval prior to annexation; inserted (4) prohibiting removal of annexed land from the district unless the district is dissolved; and made minor changes in style.

76-13-205. Determination of boundaries of district. In establishing boundaries of organized forest fire protection districts covering forest lands, the board may for the purpose of administrative convenience designate recognizable landmarks as boundaries.

History: En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959; amd. Sec. 7, Ch. 253, L. 1974; amd. Sec. 5, Ch. 397, L. 1977; R.C.M. 1947, 28-110(2).

76-13-206. What constitutes compliance with duty to protect against fire for landowners within district. An owner of forest lands within an organized forest fire protection district while a member of or while participating in a recognized agency for forest protection or within areas protected by a county shall be considered to have fully complied with the requirements of 76-13-201.

History: En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959; amd. Sec. 7, Ch. 253, L. 1974; amd. Sec. 5, Ch. 397, L. 1977; R.C.M. 1947, 28-110(1).

76-13-207. Determination and collection of costs of fire protection. (1) The department shall prepare an annual operation assessment plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of classified forest land, as specified in 76-13-201, sufficient to bring the total amount received from such landowners to no greater than one-third of the amount specified in the appropriation.

(2) On or before the second Tuesday in August of each year, the department shall certify in writing to the county assessor of each county the names of these owners of forest lands in his county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for forest fire protection.

(3) Upon receiving the certificate from the department showing the amount due, the county assessor shall extend the amounts upon the county tax rolls covering the lands, and the sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(part); amd. Sec. 2, Ch. 643, L. 1985.

76-13-208. Nature of assessments for forest fire protection. All payments required of owners of forest lands by this part and part 1 are assessments for benefits actually received by those owners in the protection of their lands and are not a tax upon the property of such owners.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(3).

76-13-209. Disposition of assessments. All sums collected pursuant to 76-13-207 shall be promptly deposited in the state special revenue fund.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(part); amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 8, Ch. 700, L. 1989.

76-13-210. Payment under protest. An owner who is required to pay to the county treasurer any sum for forest protection as required by this part or part 1 and who contends that he is not legally obligated to pay the sum or some part thereof shall pay it to the county treasurer under written protest stating the reasons for the protest. The payment under protest and all proceedings subsequent thereto shall be in conformity with the law of this state providing for the payment of taxes under protest and action to recover the same. In the hearing and determination of any action to recover the payment under protest, all questions of the legality and reasonableness of the proceedings of the board and the department may be reviewed and decided.

History: En. Sec. 12, Ch. 128, L. 1939; amd. Sec. 9, Ch. 253, L. 1974; R.C.M. 1947, 28-112.

Cross-References

Protest payments, actions to recover, and alternative remedies, Title 15, ch. 1, part 4.

76-13-211. Amount due for protection treated as lien. (1) Whenever the department provides forest protection during a forest fire season for any forest land or timber not protected by the owner thereof as required by this part or part 1, the amount due for the forest protection is a lien upon the land or timber which shall continue until such time as the amount due is paid.

(2) The lien has the same force, effect, and priority as general tax liens under the laws of the state and is subject and inferior only to tax liens on the lands. The county attorney of the county in which the land is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department shall institute an action against the forest landowner in the name of the state in any district or justice court having jurisdiction to recover the debt. The state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace.

(3) The remedies provided by this section are cumulative and do not affect the other provisions of this part or part 1 for the payment and collection of amounts due to the department.

History: En. Sec. 13, Ch. 128, L. 1939; amd. Sec. 10, Ch. 253, L. 1974; R.C.M. 1947, 28-113; amd. Sec. 52, Ch. 587, L. 1987.

Cross-References

Liens, Title 71, ch. 3.

Part 3

Control of Forest Diseases and Insect Pests

76-13-301. Policy. It is the public policy of the state to protect and preserve forest resources from destruction by forest insect pests and tree diseases, to protect the forests and watersheds of Montana, to enhance the production of forests, to promote the stability of forest industry, to protect the recreational values of the forest, and to independently and through cooperation with the federal government and private forest landowners adopt measures to control, suppress, and eradicate outbreaks of forest insect pests and tree diseases.

History: En. Sec. 1, Ch. 25, L. 1953; Sec. 28-130, R.C.M. 1947; amd. and redes. 28-204 by Sec. 21, Ch. 253, L. 1974; R.C.M. 1947, 28-204.

76-13-302. Definitions. In this part, the following definitions apply:

(1) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(2) "Forest land" means any land that has enough forest growth, standing or down, to constitute in the judgment of the department an insect or disease infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

(3) "Forest landowner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right-of-way, or mineral reservation.

(4) "Salvage" means the timely removal of dead and dying timber or timber that is threatened by insects, disease, fire, or windthrow when the removal of timber will help contain insect or disease outbreaks, aid in the prevention of wildfire, or provide long-range protection for such forest resources as wildlife, water, soils, or air quality.

History: En. Sec. 3, Ch. 25, L. 1953; Sec. 28-131, R.C.M. 1947; amd. and redes. 28-205 by Sec. 22, Ch. 253, L. 1974; R.C.M. 1947, 28-205; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 285, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 285 inserted definition of salvage; and made minor changes in style.

76-13-303. Creation of zone of infestation. Whenever the department determines that there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest growth on forest lands within the state and that the infestation is of such a character as to be a menace to the timber or forest growth of this state, the department shall, with the approval of the board of land commissioners, declare the existence of a zone of infestation and fix the boundaries so as to definitely describe and identify the zone.

History: En. Sec. 5, Ch. 25, L. 1953; Sec. 28-133, R.C.M. 1947; amd. and redes. 28-206 by Sec. 23, Ch. 253, L. 1974; R.C.M. 1947, 28-206(1); amd. Sec. 2, Ch. 529, L. 1981.

76-13-304. Suppression and eradication of infestation. (1) The department may enter upon the land within the zone and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated, and destroyed in the manner approved by it.

(2) In order to accomplish the suppression, eradication, and destruction of the infestation, the department may enter into cooperative agreements with the federal government or other public or private agencies and with forest landowners, using such funds as are made available for those purposes.

History: En. Sec. 5, Ch. 25, L. 1953; Sec. 28-133, R.C.M. 1947; amd. and redes. 28-206 by Sec. 23, Ch. 253, L. 1974; R.C.M. 1947, 28-206(2).

76-13-305. Termination of zone of infestation. When the department determines that forest insect or disease control work within the designated zone of infestation is no longer necessary or feasible, it shall abolish the zone.

History: En. Sec. 6, Ch. 25, L. 1953; Sec. 28-134, R.C.M. 1947; amd. and redes. 28-207 by Sec. 24, Ch. 253, L. 1974; R.C.M. 1947, 28-207.

Part 4

Control of Timber Slash and Debris

Part Cross-References

Brush disposal requirements, 77-5-204.

76-13-401. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana Constitution.

(2) "Certification of clearance" means a certification issued by the department acknowledging that the fire hazard has been reduced or managed in accordance with this part and the fire hazard reduction agreement or agreements.

(3) "Contractor" means the person who executes the fire hazard reduction agreement and is responsible to fulfill the obligations established by the agreement.

(4) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(5) "Fire hazard" means slash and debris resulting from timber cutting, timber stand improvement, or right-of-way clearing operations that produce a cover of flammable material in which fire could spread through a cutting or adjacent area.

(6) "Fire hazard reduction agreement" means a contract made to ensure compliance with this part and with the rules adopted under 76-13-403 for fire hazard reduction or management.

(7) "Fire hazard reduction or management" means the abatement of a fire hazard by methods that include but are not limited to separation, removal, scattering, lopping, crushing, piling and burning, broadcast burning, burying, or chipping.

(8) "Forest product" means trees or their component parts, including but not limited to logs, poles, branches, or bark.

(9) "Master fire hazard reduction agreement" means a fire hazard reduction agreement between the department and persons engaged in continuing cutting operations of sufficient number and size to warrant covering these operations under a single agreement and a single bond.

(10) "Person" means an individual, association, partnership, corporation, estate, or any other entity.

(11) "Purchaser" means a person who purchases or contracts to purchase any forest products cut from private forest lands within the state. The term includes persons who purchase products manufactured on the cutting area.

History: En. 28-403.1 by Sec. 1, Ch. 522, L. 1975; R.C.M. 1947, 28-403.1; amd. Secs. 1, 2, Ch. 529, L. 1981; amd. Sec. 1, Ch. 513, L. 1989.

76-13-402. Basis for management of fire hazards. The fire hazard reduction or management referred to in this part shall be carried on by the department in keeping with modern and progressive forest practices and effective forest fire protection and may include but is not limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard.

History: Ap. p. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971; amd. Sec. 31, Ch. 253, L. 1974; amd. Sec. 6, Ch. 522, L. 1975; Sec. 28-408, R.C.M. 1947; Ap. p. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; Sec. 28-411, R.C.M. 1947; R.C.M. 1947, 28-408(2), 28-411(part); amd. Sec. 2, Ch. 513, L. 1989.

76-13-403. Supervision by department. The department, under rules adopted by the board, may supervise and inspect the fire hazard reduction or management of all fire hazards created by forest products harvesting, timber stand improvement, and right-of-way clearing on private land in the state.

History: En. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971; amd. Sec. 31, Ch. 253, L. 1974; amd. Sec. 6, Ch. 522, L. 1975; R.C.M. 1947, 28-408(1); amd. Sec. 3, Ch. 513, L. 1989.

76-13-404. Repealed. Sec. 13, Ch. 513, L. 1989.

History: En. Sec. 7, Ch. 207, L. 1959; amd. Sec. 2, Ch. 147, L. 1971; amd. Sec. 32, Ch. 253, L. 1974; amd. Sec. 7, Ch. 522, L. 1975; R.C.M. 1947, 28-410; amd. Sec. 1, Ch. 670, L. 1979.

76-13-405. Contracts with forest fire protection agencies. The department is authorized to enter into contracts with forest fire protection agencies, including agencies of the United States, for fire hazard reduction or management when in its opinion the work can best be accomplished in that manner.

History: En. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; R.C.M. 1947, 28-411(part); amd. Sec. 4, Ch. 513, L. 1989.

76-13-406. Limitation on liability. The department and other recognized forest fire protection agencies, including any agency of the United States, with which the department has entered into an agreement for fire hazard reduction or management as provided in 76-13-405 and any officer, official, or employee of the department or other recognized forest fire protection agency is not liable for any damage to the land, product, improvement, or other things of value upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of this part, the rules adopted under 76-13-403, and the fire hazard reduction agreement when reasonable care and caution has been used and the work is being or has been performed in compliance with the rules provided in 76-13-403.

History: En. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; R.C.M. 1947, 28-411(part); amd. Sec. 5, Ch. 513, L. 1989.

Cross-References

Liability exposure, Title 2, ch. 9, part 1.

76-13-407. Reduction of slash and debris along right-of-way. (1) A person clearing right-of-way for any railroad, public highway, public trail, private road, trail, ditch, dike, pipeline or wire lines, or any other transmission or transportation utility right-of-way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from the clearing or from the cutting of material for the construction of the public or private utility unless exempted by the department. At least 10 days before commencement of the clearing, the person conducting the clearing shall notify the department of commencement of the clearing in the form and manner the department provides.

(2) Hazard reduction, excluding burning where this method is used, shall be done as rapidly as cutting or clearing progresses.

(3) This section applies to all clearing of rights-of-way across private land and on behalf of the state, county, highway districts, and road districts, whether the work is done by day labor or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting the work for withholding until it is complete a sufficient portion of the payment to assure compliance with this part.

History: En. Sec. 2, Ch. 207, L. 1959; amd. Sec. 28, Ch. 253, L. 1974; amd. Sec. 3, Ch. 522, L. 1975; R.C.M. 1947, 28-405; amd. Sec. 2, Ch. 670, L. 1979; amd. Sec. 6, Ch. 513, L. 1989.

Cross-References

Control of fire hazard along railroad right-of-way, 69-14-721.

76-13-408. Fire hazard reduction agreement and bond. (1) Before cutting any forest product, constructing or reconstructing any road in contemplation of cutting any forest product, or conducting timber stand improvement, such as but not limited to thinning, weeding, or pruning, upon private lands within the state, the person conducting the work shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement or a master fire hazard reduction agreement with the department, providing for the full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted by the board.

(2) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall post a bond to the state in a form and for an amount as may be prescribed by the department, but the amount may not exceed $6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut.

(3) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall pay 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.

(4) The agreement must provide that:

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted by the board.

(5) The bond must be released upon the issuance of the certificate of clearance.

History: En. Sec. 1, Ch. 207, L. 1959; amd. Sec. 27, Ch. 253, L. 1974; amd. Sec. 2, Ch. 522, L. 1975; R.C.M. 1947, 28-404; amd. Sec. 5, Ch. 423, L. 1989; amd. Sec. 7, Ch. 513, L. 1989; amd. Sec. 1, Ch. 577, L. 1991.

76-13-409. Duty of purchaser to ensure compliance — statement — bond. (1) The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged or about to engage in the cutting of these forest products has provided for the reduction or management of the fire hazard by entering into a fire hazard reduction agreement as provided in 76-13-408.

(2) The purchaser shall withhold sufficient money to meet the requirements of the bond provided for in 76-13-408 plus the fees for administration, inspection, and enforcement by the department as provided in the hazard reduction agreement. The purchaser shall transmit all money and fees that

are withheld and a report of volumes of products purchased to the department on or before the 15th day of the following month, clearly identifying by number the fire hazard reduction agreement to which the withheld money, fees, and product volumes pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.

(3) If forest products are not received or purchased in a given month, a report showing a zero balance and stating that products were not purchased must be submitted to the department.

(4) The department may require the purchaser to post a bond to the state in a form and for an amount as may be prescribed by the department to ensure faithful compliance with this part."

History: En. Sec. 3, Ch. 207, L. 1959; amd. Sec. 29, Ch. 253, L. 1974; amd. Sec. 4, Ch. 522, L. 1975; R.C.M. 1947, 28-406; amd. Sec. 3, Ch. 670, L. 1979; amd. Sec. 8, Ch. 513, L. 1989.

76-13-410. Failure to comply. (1) If a person fails, refuses, or neglects to properly reduce or manage the fire hazard in accordance with the requirements of 76-13-407 and 76-13-408, he may be enjoined from further cutting, clearing, and construction operations until 76-13-407 and 76-13-408 have been complied with. The department may initiate the proceedings and may obtain a temporary restraining order, injunction, or writ of mandate. The proceedings shall be conducted in the district court of the county where the land is located.

(2) If a person fails to comply with 76-13-407 or 76-13-408 and fails to comply within 30 days after being notified to do so by the department, the department may complete, direct, or authorize the fire hazard reduction or management at the expense of the contractor or of the owner of the timber or other forest products cut or produced from the land upon which the unabated fire hazard remains.

(3) The cost and expense of the fire hazard reduction or management work, plus 20% of the cost and expense of the work as a penalty, constitutes a lien upon the forest products cut or produced from the land and upon the real and personal property of the contractor. If payment of the sum demanded is not made to the department within 10 days of its written demand, the department shall bring legal action on behalf of the state to recover the debt.

History: En. Sec. 4, Ch. 207, L. 1959; amd. Sec. 30, Ch. 253, L. 1974; amd. Sec. 5, Ch. 522, L. 1975; R.C.M. 1947, 28-407(1) thru (3); amd. Sec. 4, Ch. 670, L. 1979; amd. Sec. 9, Ch. 513, L. 1989.

76-13-411. Certification of clearance. When the department makes a determination of faithful compliance by the contractor with this part, the rules adopted under 76-13-403, and the hazard reduction agreement, the contractor must be issued a certification of clearance by the department and be relieved of any further liability or responsibility for fire hazard reduction or management under the fire hazard reduction agreement.

History: (1)En. Sec. 9, Ch. 207, L. 1959; amd. Sec. 3, Ch. 147, L. 1971; amd. Sec. 34, Ch. 253, L. 1974; amd. Sec. 8, Ch. 522, L. 1975; Sec. 28-412, R.C.M. 1947; (2)En. Sec. 4, Ch. 207, L. 1959; amd. Sec. 30, Ch. 253, L. 1974; amd. Sec. 5, Ch. 522, L. 1975; Sec. 28-407, R.C.M. 1947; R.C.M. 1947, 28-407(4), 28-412; amd. Sec. 10, Ch. 513, L. 1989.

76-13-412. Violations. A person convicted of violating this part is guilty of a misdemeanor and shall be fined not less than $100 or more than $1,000.

History: En. 28-413 by Sec. 9, Ch. 522, L. 1975; R.C.M. 1947, 28-413.

Cross-References

Definition of "misdemeanor", 45-2-101.

76-13-413. Failure to submit withholding — remedy. (1) If a purchaser does not submit withheld money and required reports on or before the 15th day of the following month as provided in 76-13-409, he must be notified by certified mail that he is in noncompliance and be given 15 days to submit all money and reports then due. If he fails to submit all money due within the required time, the department may initiate a lien upon the real property of the purchaser and may initiate proceedings to enjoin further processing of all wood products until all money due is paid in full and all required reports are submitted.

(2) If payment and reports are not received by the department within the 15-day period after notification as provided in subsection (1), a penalty of 5% of the payment amount due must be assessed. The department may abate the penalty if the purchaser establishes that the failure to submit the amount due or the reports as required was due to reasonable cause and was not due to neglect on his part. The department, in addition to the penalty, may impose interest at the rate of 10% a year on any balance remaining unpaid.

(3) All money withheld by a purchaser for the contractor's bond and for department fees is considered to be excise taxes withheld for the benefit of the state within the meaning of 11 U.S.C. 507.

History: En. Sec. 5, Ch. 670, L. 1979; amd. Sec. 1, Ch. 115, L. 1981; amd. Sec. 11, Ch. 513, L. 1989.

76-13-414. Fees. (1) In addition to any bond, the department shall charge the contractor fees for administration, inspections, and enforcement work conducted in the exercise of its duties under this part. The fees must be deposited in the state special revenue fund to the credit of the department.

(2) (a) The fee for a fire hazard reduction agreement is $25 and must be collected by the department upon issuance of the agreement.

(b) In addition, a fee of 60 cents for each 1,000 board feet (log scale) must be charged or an equivalent fee must be charged if products other than logs are cut. This fee must be withheld by the purchaser as provided in 76-13-409(2), except that any fee money withheld for product volumes exceeding 500,000 board feet per agreement in a calendar year must be returned to the contractor by the department.

(3) (a) The fee for master fire hazard reduction agreements must be equal to 100% of the department's actual costs incurred in the administration, inspection, and enforcement of each agreement, and the department shall bill the contractor annually to collect such fees.

(b) In addition, each contractor with a master fire hazard reduction agreement shall pay to the department 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year for each master fire hazard attachment. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.

(c) The fee required under subsection (3)(b) must be paid annually in conjunction with the fee paid under subsection (3)(a). The board may, in its discretion, conduct an audit to determine the volume of forest products harvested by a contractor. If the board conducts an audit, the contractor shall cooperate and make available to the board all requested records, inventories, and other information relevant to the audit.

History: En. Sec. 12, Ch. 513, L. 1989; amd. Sec. 2, Ch. 577, L. 1991.

76-13-415. Forestry extension service account — purpose — appropriation. (1) There is a forestry extension service account in the current restricted fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the fire hazard reduction agreement provided for in 76-13-408(3);

(b) all revenue from the master fire hazard reduction agreement provided for in 76-13-414(3)(b); and

(c) money received by the department of state lands in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money in the account is available to the Montana university system by appropriation for the uses set forth in subsection (4). Any unencumbered and unexpended balance of this account remaining at the end of a fiscal year does not lapse but must be carried forward for the purposes of this section until expended or appropriated.

(4) Except as provided in subsection (5), money in the account may be used by the university system only to fund forestry services through the Montana cooperative extension service of Montana state university. The forestry services must be conducted at Montana state university, the university of Montana, and Flathead Valley community college.

(5) The use of money in this account by the Montana university system is contingent upon the university system funding the extension service's forestry and natural resources program at a biennial level of at least $108,000 from sources other than the account.

History: En. Sec. 3, Ch. 577, L. 1991.

Part 5

Portable Sawmills on Forest Lands

76-13-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(2) "Portable sawmill" means a sawmill located upon forest land within the state and having a rated capacity of less than 5,000 feet per hour of operation.

History: En. 28-801 by Sec. 106, Ch. 253, L. 1974; R.C.M. 1947, 28-801; amd. Sec. 1, Ch. 529, L. 1981.

76-13-502. Portable sawmill license required. It is unlawful to operate a portable sawmill located upon forest lands within the state without first obtaining a license therefor from the department.

History: En. Sec. 1, Ch. 124, L. 1931; re-en. Sec. 1839.1, R.C.M. 1935; Sec. 81-1501, R.C.M. 1947; amd. and redes. 28-802 by Sec. 107, Ch. 253, L. 1974; R.C.M. 1947, 28-802.

76-13-503. Application for license — fee. (1) Whenever a person, firm, or corporation desires to commence the operation of a portable sawmill located or to be located upon forest lands within the state, that person, firm, or corporation shall apply to the department in writing for a license to operate the portable sawmill. The application shall include the name of the person, firm, or corporation contemplating the operation of the sawmill; the location thereof by section, township, and range numbers; the rated capacity of the sawmill and the approximate amount of stumpage to be cut at the proposed setting; and the approximate date desired for the commencement of the operation.

(2) The application shall be accompanied by the payment of a fee of $2, which is fixed as the license fee for the operation of any portable sawmill, to be credited to the agency fund.

History: En. Sec. 2, Ch. 124, L. 1931; re-en. Sec. 1839.2, R.C.M. 1935; amd. Sec. 2, Ch. 248, L. 1965; Sec. 81-1502, R.C.M. 1947; amd. and redes. 28-803 by Sec. 108, Ch. 253, L. 1974; R.C.M. 1947, 28-803; amd. Sec. 35, Ch. 281, L. 1983.

76-13-504. Issuance of license — term. Upon the receipt of the application and the payment of the fee, the department shall issue a license to the person, firm, or corporation applying therefor. The license shall be upon a form provided by the department and shall cover such period as the sawmill remains in continuous operation on a single setting or location or until revocation by the department.

History: En. Sec. 3, Ch. 124, L. 1931; re-en. Sec. 1839.3, R.C.M. 1935; Sec. 81-1503, R.C.M. 1947; amd. and redes. 28-804 by Sec. 109, Ch. 253, L. 1974; R.C.M. 1947, 28-804.

76-13-505. Revocation of license. Whenever it appears that there is a violation of any law of the state enacted for the protection of forest and forest lands in connection with the operation of a portable sawmill or in the protection of the lands from which the timber sawed or to be sawed at a mill is cut, the department may revoke the license and thereby suspend the operation of a sawmill until the conditions constituting a violation of law are remedied and removed.

History: En. Sec. 4, Ch. 124, L. 1931; re-en. Sec. 1839.4, R.C.M. 1935; Sec. 81-1504, R.C.M. 1947; amd. and redes. 28-805 by Sec. 110, Ch. 253, L. 1974; R.C.M. 1947, 28-805.

76-13-506. Penalty. A person, firm, or corporation violating this part is guilty of a misdemeanor and shall be fined not less than $25 or more than $500, which fines are to be credited to the general school funds of the state.

History: En. Sec. 6, Ch. 124, L. 1931; re-en. Sec. 1839.6, R.C.M. 1935; Sec. 81-1506, R.C.M. 1947; amd. and redes. 28-806 by Sec. 111, Ch. 253, L. 1974; R.C.M. 1947, 28-806(part).

76-13-507. Effect on liability for fire. This part shall not be construed to in any manner affect the civil liability of any person in connection with the origin or spread of fire in the forest lands of the state.

History: En. Sec. 6, Ch. 124, L. 1931; re-en. Sec. 1839.6, R.C.M. 1935; Sec. 81-1506, R.C.M. 1947; amd. and redes. 28-806 by Sec. 111, Ch. 253, L. 1974; R.C.M. 1947, 28-806(part).

Part 6
Transportation of Coniferous Trees

76-13-601. Unlawful transportation of trees and boughs. (1) No person may transport on the ways of this state more than five coniferous trees without having in his possession a bill of sale showing his ownership of the trees. The bill of sale shall specify:

(a) the date of its execution;

(b) the name and address of the vendor or donor of the trees;

(c) the name and address of the vendee or donee of the trees;

(d) the number of trees, by species, sold or transferred by the bill of sale; and

(e) the shipping yards or the property from which the trees were taken.

(2) Subsection (1) does not apply to:

(a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings, or other forest products from which substantially all the limbs and branches have been removed;

(c) the transportation of coniferous trees by the owner of the land from which they were taken or his agent, provided that agent has in his possession a tax receipt or other evidence indicating the section, township, and range from which the trees were harvested;

(d) the transportation of coniferous trees by a common carrier.

(3) No person may transport on the ways of this state more than 200 pounds of boughs from coniferous trees without written authorization of the owner of the boughs.

(4) The bill of sale required in subsection (1) or the written authorization required in subsection (3) must be exhibited on request of a law enforcement officer, highway patrol officer, state fish and game warden, an employee of the department of transportation as appointed under 61-12-201, or an agent of the department of state lands.

(5) A person who violates this section shall be punished by a fine not to exceed $500 or imprisonment not to exceed 6 months, or both.

(6) For the purposes of this section, "ways of this state" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public vehicle travel that is commonly used by the public with the express or implied consent of the owner.

History: En. Sec. 1, Ch. 133, L. 1981; amd. Sec. 1, Ch. 621, L. 1983; (5)En. Sec. 2, Ch. 621, L. 1983; amd. Sec. 1, Ch. 35, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Place of imprisonment when not specified by law, 46-18-211.

CHAPTER 14

RANGELAND RESOURCES

Part 1 — Rangeland Management

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76-14-115. Selection of loan recipients.
76-14-116. Rules.

Part 1

Rangeland Management

76-14-101. Short title. This part shall be known as the "Montana Rangeland Resources Act".

History: En. 76-301 by Sec. 1, Ch. 408, L. 1977; R.C.M. 1947, 76-301.

76-14-102. Purpose. The purpose of this part is to establish a program of rangeland management whereby:

(1) the importance of Montana's rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control, erosion control, recreation, and the natural beauty of the state is recognized;

(2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and

(3) those who are doing exceptional work in range management can receive appropriate recognition.

History: En. 76-302 by Sec. 2, Ch. 408, L. 1977; R.C.M. 1947, 76-302.

76-14-103. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana rangeland resources committee selected as provided in 2-15-3305(2).

(2) "Department" means the department of natural resources and conservation.

(3) "Grazeable woodlands" means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.

(4) "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Mon-

tana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

(5) "Person" means any individual or association, partnership, corporation, or other business entity.

(6) "Range condition" means the current condition of the vegetation on a range site in relation to the natural potential plant community for that site.

(7) "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

(8) "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

(9) "State coordinator" means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.

(10) "Tame pasture" means land that has been modified by mechanical cultivation and whose current vegetation consists of native or introduced species, or both.

(11) "Users of rangeland" means all persons, including but not limited to ranchers, farmers, sportsmen, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.

History: (1) thru (6), (8)En. 76-303 by Sec. 3, Ch. 408, L. 1977; Sec. 76-303, R.C.M. 1947; (7)En. by Code Commissioner, 1979; R.C.M. 1947, 76-303(part); amd. Sec. 1, Ch. 171, L. 1983.

76-14-104. Types of land included as rangeland. The term "rangeland" includes lands revegetated naturally or artificially to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

History: En. 76-303 by Sec. 3, Ch. 408, L. 1977; R.C.M. 1947, 76-303(part).

76-14-105. Role of state coordinator. The state coordinator shall:

(1) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;

(2) strive to create understanding and compatibility between the many users of rangeland, including sportsmen, recreationists, ranchers, and others;

(3) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners;

(4) participate in zoning and planning studies to insure that native ranges are adequately represented at sessions for development of zoning and planning regulations;

(5) coordinate range management research to help prevent duplication and overlap of effort in this area.

History: En. 76-304 by Sec. 4, Ch. 408, L. 1977; R.C.M. 1947, 76-304(2).

76-14-106. Duties of rangeland resources committee. (1) The committee shall:

(a) review and recommend annual and long-range work programs;

(b) suggest priorities of work;

(c) provide advice and counsel to the coordinator for carrying out the rangeland resource program.

(2) The committee may consult with state and federal agencies and units of the university system as it considers appropriate in performing its duties.

History: En. 76-307 by Sec. 7, Ch. 408, L. 1977; R.C.M. 1947, 76-307; amd. Sec. 2, Ch. 44, L. 1985.

76-14-107 through 76-14-110 reserved.

76-14-111. Rangeland improvement loan program. The department may make rangeland improvement loans for rangeland development and improvement, including but not limited to stockwater development, cross fencing, establishment of grazing systems, reseeding, mechanical renovation, sagebrush management, and weed control.

History: En. Sec. 2, Ch. 171, L. 1983.

76-14-112. Rangeland improvement loan special revenue account. (1) There is created a rangeland improvement loan special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be allocated to the rangeland improvement loan earmarked account any principal and accrued interest received in repayment of a loan made under the rangeland improvement loan program and any fees or charges collected by the department pursuant to 76-14-116 for the servicing of loans, including arrangements for obtaining security interests.

History: En. Sec. 3, Ch. 171, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 14, Ch. 418, L. 1987; amd. Sec. 55, Ch. 16, L. 1991.

76-14-113. Eligibility for loans. (1) Any person may apply for a loan to finance rangeland improvements to be constructed, developed, and operated in Montana who:

(a) is a resident of Montana;

(b) is engaged in farming or ranching; and

(c) possesses the necessary expertise to make a rangeland loan practical.

(2) All loans must be for rangeland improvement or development exclusively.

(3) An application for a loan must be in the form prescribed by the department and accompanied by a resource conservation plan, which may be prepared in consultation with the United States soil conservation service.

History: En. Sec. 4, Ch. 171, L. 1983.

76-14-114. Criteria for evaluation of loan applications. The following criteria must be considered in selecting loan recipients:

(1) Loan applications must be ranked according to the following priorities:

(a) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition and of benefit to more than a single operator, have first priority.

(b) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition but of benefit to only a single operator, have second priority.

(c) Range improvement or development projects undertaken on either native rangeland or tame pastureland used in conjunction with native rangeland, or both, resulting in the improvement of native range condition and the condition of the tame pastureland used in conjunction with native rangeland, have third priority.

(d) Range improvement or development projects undertaken on tame pastureland, resulting in the improvement of the tame pastureland exclusively, have fourth priority.

(e) Range improvement or development projects undertaken to return to rangeland status land that was once native rangeland and that has since been cultivated have fifth priority.

(2) Consideration must be given to the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and soil conservation.

(3) Consideration must be given to the amount of funding from other sources.

(4) Consideration must be given to the feasibility and practicality of the project.

History: En. Sec. 5, Ch. 171, L. 1983.

76-14-115. Selection of loan recipients. (1) Conservation district supervisors shall initially review loan applications for feasibility and prioritize applications for referral to the department.

(2) The department shall organize and review applications for clarity and completeness prior to committee review.

(3) The committee shall consider applications and make recommendations to the department.

(4) The department shall finally approve or disapprove applications recommended by the committee and shall select loan recipients.

History: En. Sec. 6, Ch. 171, L. 1983.

76-14-116. Rules. The department shall adopt rules:

(1) prescribing the form and content of applications for loans and the required conservation plan;

(2) governing the application of the criteria for awarding loans and the procedure for the review of applications by conservation district supervisors, the committee, and the department;

(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(4) providing for the confidentiality of financial statements submitted; and

(5) prescribing the conditions for making loans.

History: En. Sec. 7, Ch. 171, L. 1983.

Cross-References

Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

CHAPTER 15

CONSERVATION DISTRICTS

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Chapter Cross-References

Montana Environmental Policy Act, Title 75, ch. 1.

Conservation easements, Title 76, ch. 6, part 2.

Part 1
General Provisions

76-15-101. Legislative determinations. It is hereby declared, as a matter of legislative determination:

(1) that the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land use practices have caused and have contributed to and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the

natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible;

(2) that the consequences of such soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, and ditches; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops and range cover grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop and range vegetation cover failures; and increase in the speed and volume of rainfall runoff, causing severe and increasing floods which bring suffering, disease, and death; impoverishment of families attempting to operate eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in municipal water supply, irrigation developments, farming, and grazing;

(3) that to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages and further the conservation, development, utilization, and disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of

rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(A) thru (C).

76-15-102. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(D).

76-15-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "District" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(5) "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area, the posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally.

(6) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(7) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity who holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.

(8) "Petition" means a petition filed under 76-15-201 for the creation of a district.

(9) "Qualified elector" means an elector as defined in Title 13.

(10) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.

(11) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part); amd. Sec. 393, Ch. 571, L. 1979.

76-15-104. Adjournment of hearings. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part).

76-15-105. Duties of department. In addition to the duties hereinafter conferred upon the department, it shall:

(1) offer assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs;

(2) keep the supervisors of each of the several districts informed of the activities and experiences of all other districts and facilitate an interchange of advice and experiences between the districts and cooperation between them;

(3) coordinate the programs of the several conservation districts hereunder so far as this may be done by advice and consultation;

(4) secure the cooperation and assistance of the United States and of agencies of this state in the work of the districts;

(5) disseminate information throughout the state concerning the activities and programs of the conservation districts; and

(6) encourage the formation of districts in areas where their organization is desirable.

History: En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967; amd. Sec. 1, Ch. 291, L. 1969; amd. Sec. 3, Ch. 431, L. 1971; amd. Sec. 89, Ch. 253, L. 1974; R.C.M. 1947, 76-104.

Part 2

Creation of Conservation Districts

76-15-201. Petition to create conservation district. (1) Any 10% of the qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the board approve the organization of a conservation district to function in the territory described in the petition.

(2) The petition shall set forth:

(a) the proposed name of the district;

(b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;

(c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but shall be considered sufficient if generally accurate;

(d) a request that the board duly define the boundaries for the district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in the territory; and that the board determine that a district be created.

(3) Where more than one petition is filed covering parts of the same territory, the board may consolidate all or any part of the petitions.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(1), (2); amd. Sec. 1, Ch. 76, L. 1985.

76-15-202. Hearing on petition. (1) Within 30 days after a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing before the department upon the question of the desirability and necessity in the interest of the public health, safety, and welfare of the creation of the district; upon the question of the appropriate boundaries to be assigned to the district; upon the propriety of the petition and other proceedings taken under this chapter; and upon all questions relevant to those inquiries.

(2) All qualified electors within the limits of the territory described in the petition and of lands within any territory considered for addition to the described territory and all other interested parties are entitled to attend the hearings and be heard.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

Cross-References

Applicability of Montana Administrative Procedure Act, 2-4-107.

76-15-203. Hearing procedure if additional territory to be included. If it appears to the board after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the board shall adjourn the hearing and the department shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district, and the further hearing shall be held by the department.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-204. Board determination of need for district. (1) After the hearing, if the board determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available to the department or the board, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district.

(2) If the board determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made thereon.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-205. Criteria for determining need. In making the determinations and in defining the boundaries, the board shall consider the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and other conservation districts already organized or proposed for organization under this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in 76-15-101 and 76-15-102. The territory to be included within the boundaries need not be contiguous.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-206. Determination of administrative practicability of district. After the board has made and recorded a determination that there is need in the interest of the public health, safety, and welfare for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this chapter is administratively practicable and feasible.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-207. Referendum on question of creating district. (1) To assist the board in the determination of this administrative practicability and feasibility, the department shall, within a reasonable time after entry of the board's finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given.

(2) The question shall be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of ...., ..., and ...." and "Against creation of a conservation district of the lands below described and lying in the county(ies) of .... and ...." shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the district. The ballot shall set forth the boundaries of the proposed district as determined by the board.

(3) All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-208. Administration of hearings and referenda. (1) The department shall pay all expenses for the issuance of the notices and the conduct of the hearings and referenda and shall supervise the conduct of the hearings and referenda. It shall adopt appropriate rules governing the conduct of the hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum.

(2) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof has been given substantially as herein provided and the referendum has been fairly conducted.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(5).

76-15-209. Board procedure following referendum. (1) The department shall publish the result of the referendum, and the board shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the board determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization of the district in the manner hereinafter provided.

(3) If the board determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. After 6 months have expired from the date of entry of a determination by the board that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant to the determination, subsequent petitions may be filed and action taken thereon in accordance with this part.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-210. Criteria for determining administrative practicability. (1) In making its determination, the board shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and such other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in 76-15-101 and 76-15-102.

(2) However, the board may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district has been cast in favor of the creation of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-211. Appointment of supervisors. If the board determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors first elected, as provided hereinafter, as the initial governing body of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-212. Submission of application by appointed supervisors. The district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

(1) The two appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth:

(a) that a petition for the creation of the district was filed with the department pursuant to this chapter, that the proceedings specified in this chapter were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter, and that the board has appointed them as supervisors;

(b) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office;

(c) the term of office of each of the supervisors;

(d) the name which is proposed for the district; and

(e) the location of the principal offices of the supervisors of the district.

(2) The application shall be subscribed and sworn to by each of the supervisors.

(3) The application shall be accompanied by a statement by the department which shall certify that a petition was filed, notice issued, and hearing held as provided in this part; that the board determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries thereof; that notice was given and a referendum held on the question of the creation of the district; and that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that thereafter the board determined that the operation of the proposed district is administratively practicable and feasible. The statement shall also set forth the boundaries of the district as they have been defined by the board.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-213. Processing of application by secretary of state. (1) The secretary of state shall examine the application and statement, and if he finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office.

(2) If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, he shall certify that fact to

the board, which shall thereupon submit to the secretary of state a new name for the district which is not subject to such defects. Upon receipt of the new name free of such defects, the secretary of state shall record the application and statement with the name so modified in an appropriate book of record in his office.

(3) The secretary of state shall make and issue to the supervisors without cost a certificate under the seal of the state of the due organization of the district and shall record the certificate with the application and statement.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

76-15-214. Evidentiary status of certificate issued by secretary of state. In a suit, action, or proceeding involving the validity or enforcement of or relating to a contract, proceeding, or action of the district, the district shall be considered to have been established in accordance with this chapter upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate, duly certified by the secretary of state, is admissible in evidence in the suit, action, or proceeding and is proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(11).

76-15-215. District as governmental subdivision and public body. When the application and statement have been made, filed, and recorded as herein provided, the district is a governmental subdivision of this state and a public body, corporate and politic, exercising public powers.

History: Ap. p. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; Sec. 76-105, R.C.M. 1947; Ap. p. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; Sec. 76-108, R.C.M. 1947; R.C.M. 1947, 76-105(part), 76-108(part).

76-15-216. Limitation on territory included in district. The boundaries of the district shall include the territory as determined by the board, but they may not include any area included within the boundaries of another conservation district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

Cross-References

Combination or division of districts, 76-15-803.

Part 3

Administration of Conservation Districts

76-15-301. Establishment and reorganization of supervisor areas. (1) (a) The conservation district is authorized to divide the unincorporated area of the district into no more than five supervisor areas.

(b) Each supervisor area must be represented by one supervisor. If provided by ordinance of the conservation district, a supervisor shall reside in the supervisor area represented. A certified copy of the ordinance must be submitted to the election administrator in each affected county. If less than five supervisor areas are established, sufficient supervisors must be elected at large to complete the governing body of the district as provided in 76-15-311(1).

(2) In a district containing no incorporated municipalities, the board may reorganize the district into seven supervisor areas.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(12); (2)En. Sec. 1, Ch. 173, L. 1983; amd. Sec. 1, Ch. 473, L. 1983; amd. Sec. 2, Ch. 76, L. 1985.

76-15-302. Nominations for supervisor. (1) Within 30 days after the date of issuance of a certificate of organization of a conservation district by the secretary of state, nominating petitions may be filed with the registrar, as defined in Title 13, to nominate candidates for supervisors of the district. A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district wherein the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor.

(2)· If more than twice the number of candidates are nominated than the number to be elected at the general election, the registrar shall give due notice of a nominating election to be held for the selection of candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part); amd. Sec. 3, Ch. 76, L. 1985.

76-15-303. General election. (1) All qualified electors within the district are eligible to vote in the election.

(2) The candidate or, if more than one supervisor position is to be filled by the general election, the candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(3) In the general election, the names of the individuals nominated shall be printed, as provided under 13-12-205, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the elector's preference.

(4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates for the election of supervisors, which ballots shall be delivered to the election judges in those precincts which contain registered electors prior to each general election and each primary election, if necessary. The election judges and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election, and tabulate the results of such election in the manner provided in Title 13.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part); amd. Sec. 369, Ch. 571, L. 1979; amd. Sec. 4, Ch. 76, L. 1985; amd. Sec. 2, Ch. 576, L. 1985.

76-15-304. Election of supervisors. (1) Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections.

(2) Nominations for the election of supervisors shall be made as provided under 76-15-302 except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(2).

76-15-305. Transition to seven supervisors. (1) At the time of reorganization under 76-15-301(2), the board shall appoint:

(a) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the next general election; and

(b) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the general election following the next general election.

(2) The supervisor positions held by the appointed supervisors become open for election at the time the terms expire. Thereafter, a district having seven supervisors shall alternately elect four and three supervisors at succeeding general elections.

(3) Nominations for the election of supervisors in a district having seven supervisors must be made as provided in 76-15-302.

(4) The term of each elected supervisor is 4 years.

(5) The election administrator in each county having a seven-supervisor district shall conduct the election for that district in a manner similar to elections conducted for a district having five supervisors.

History: En. Sec. 2, Ch. 173, L. 1983.

76-15-306 through 76-15-310 reserved.

76-15-311. Governing body of district. (1) If there are no incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of five elected supervisors unless the district has been reorganized pursuant to 76-15-301(2) and 76-15-305.

(2) If there are incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in such districts. The two appointed supervisors must be residents of municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors. The term of office of the appointed supervisors shall be 3 years.

(b) Where there are more than two incorporated municipalities within a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district and no municipality shall have more than one appointed supervisor residing therein.

(3) The board of supervisors may appoint associate supervisors it considers necessary to advise the board of supervisors on the operation of the conservation district as provided in part 4 of this chapter.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(1) thru (3); amd. Sec. 17, Ch. 266, L. 1979; amd. Sec. 3, Ch. 173, L. 1983; amd. Sec. 2, Ch. 473, L. 1983.

76-15-312. Term of office and vacancies. (1) The term of office of each supervisor shall be 4 years, except that the supervisors who are first appointed by the department shall be designated to serve for terms of 2 years from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified.

(2) A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

(a) death;

(b) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;

(c) resignation;

(d) removal from office;

(e) unexcused absence from three consecutive regular meetings of the board of supervisors;

(f) ceasing to be a resident of the district;

(g) conviction of a felony or a violation of official duties; or

(h) the decision of a court declaring void the incumbent's election or appointment.

(3) For the purpose of subsection (2)(e), a majority vote of the board of supervisors may excuse a supervisor from attending a meeting.

(4) Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 1, Ch. 223, L. 1989.

76-15-313. Operation of supervisors. (1) The supervisors shall annually elect a chairman from their members.

(2) A majority of the supervisors constitute a quorum, and except as otherwise specifically provided, the concurrence of a majority in any matter within their duties is required for its determination.

(3) Upon the unanimous approval of the board of supervisors, a supervisor may receive compensation for his services, including travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the discharge of his duties. However, no supervisor may receive compensation for attendance at a regularly scheduled meeting of the board of supervisors.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2, Ch. 533, L. 1979; amd. Sec. 3, Ch. 473, L. 1983.

76-15-314. Removal of a supervisor. A supervisor may be removed by the board and a vacancy created under 76-15-312(2)(d), upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2, Ch. 223, L. 1989.

76-15-315. Administrative functions of the supervisors. (1) The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require and shall determine their qualifications, duties, and compensation.

(2) The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees such powers and duties as they consider proper.

(3) The supervisors shall furnish to the department copies of such ordinances, rules, orders, contracts, forms, and other documents as they adopt or employ and such other information concerning their activities as may be required in the performance of their duties under this chapter.

(4) The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part).

76-15-316. Cooperation with municipalities and counties. The supervisors may invite the governing body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(7).

76-15-317. Cooperation with state agencies. Agencies of this state which shall have jurisdiction over or be charged with the administration of any state-owned lands and of any county or other governmental subdivision of the state, which shall have jurisdiction over or be charged with the administration of any county-owned or other publicly owned lands lying within the boundaries of any district organized hereunder shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land use regulations adopted pursuant to 76-15-701 through 76-15-707 shall have the force and effect of law over all such publicly owned lands and shall be in all respects observed by the agencies administering such lands.

History: En. Sec. 13, Ch. 72, L. 1939; R.C.M. 1947, 76-113.

76-15-318. Cooperation between districts. The supervisors of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

History: En. Sec. 12, Ch. 72, L. 1939; R.C.M. 1947, 76-112.

76-15-319. Legal assistance. (1) The supervisors may call upon the county attorney of the county in which the greatest portion of the district is located or the attorney general of the state for such legal services as they may require or may employ their own counsel and legal staff.

(2) If the county attorney is unable to provide legal assistance because of a conflict of interest, then the matter may be referred to the attorney general or the department of natural resources and conservation.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 3, Ch. 533, L. 1979; amd. Sec. 4, Ch. 473, L. 1983.

Cross-References

County Attorney to act as counsel for district, 7-4-2711.

76-15-320. Legal status of district. A conservation district and the supervisors thereof shall have the power to sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part).

76-15-321. Rulemaking authority. A conservation district and the supervisors thereof shall have the power to make and from time to time amend and repeal rules to carry into effect the purposes and powers of this chapter.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part); amd. Sec. 18, Ch. 266, L. 1979.

Cross-References

Applicability of Montana Administrative Procedure Act, Title 2, ch. 4.

76-15-322. Filing of notice of organization of district. Within 10 days after the creation of the district, the supervisors of a conservation district shall cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

History: En. Sec. 1, Ch. 253, L. 1963; amd. Sec. 3, Ch. 291, L. 1969; amd. Sec. 14, Ch. 431, L. 1971; R.C.M. 1947, 76-201(part).

76-15-323. Copies of notice transmitted to county commissioners. Within 30 days after receipt of such notice, the county clerk and recorder shall transmit a copy of the same to the board of county commissioners, who shall determine whether the district has been lawfully organized.

History: En. Sec. 2, Ch. 253, L. 1963; amd. Sec. 1, Ch. 152, L. 1965; R.C.M. 1947, 76-202.

Part 4

Operation of Conservation Districts

76-15-401. Study of problems relating to soil and water conservation. (1) A conservation district and the supervisors thereof shall have the power to:

(a) conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and water quality as it pertains to saline seep and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed;

(b) publish the results of such surveys, investigations, or research; and

(c) disseminate information concerning such preventive and control measures and works of improvement.

(2) In order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(1).

76-15-402. Development of soil and water conservation plans. A conservation district and the supervisors thereof shall have the power to:

(1) develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping, range programs, tillage and grazing practices, and changes in use of land; and

(2) publish such plans and information and bring them to the attention of occupiers of lands within the district.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(8).

76-15-403. Operation of projects and works. A conservation district and the supervisors thereof shall have the power to:

(1) conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of such lands or the necessary rights or interest in such land;

(2) carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including but not limited to engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in 76-15-101(3) on lands owned or controlled by this state or any of its agencies with the cooperation of the agency administering and having jurisdiction thereof and on any other

lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(3) cooperate or enter into agreements with and, within the limits of appropriations duly made available to it by law, furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion control and prevention operations, works of improvement for flood prevention, and the conservation, development, utilization, and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter;

(4) construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter;

(5) take over, by purchase, lease, or otherwise, and administer any soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies or by this state or any of its agencies; manage, as agent of the United States or any of its agencies or of this state or any of its agencies, any soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention project, or combination thereof, within its boundaries; act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention projects, or combination thereof, within its boundaries; accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States or any of its agencies or from this state or any of its agencies and use or expend such moneys, services, materials, or other contributions in carrying on its operations.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(2) thru (4), (7), (9).

76-15-404. Acquisition and management of property. (1) A conservation district and the supervisors thereof shall have the power to obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property (real or personal) or rights or interests therein; to maintain, administer, and improve any properties acquired; to receive income from such properties; to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

(2) All such property shall be exempt from taxation by the state or any political subdivision thereof.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(5).

76-15-405. Limitation on acquisition, operation, or disposition of property. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: **En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(B).**

76-15-406. Furnishing of supplies and equipment. A conservation district and the supervisors thereof shall have the power to make available to land occupiers within the district, on such terms as it shall prescribe, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water.

History: **En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(6).**

76-15-407. Selection and acquisition of water storage sites. (1) Each conservation district within the state shall seek and may select at least one off-stream water storage site for the construction of a reservoir.

(2) If funding is available for a reservoir or other reclamation project, the conservation district shall acquire the site by purchase.

(3) Supervisors of conservation districts may designate sites for future construction of reservoirs. The supervisors shall designate such site by filing a legal description thereof in the office of the clerk and recorder of the county in which the site is located or the counties in which the site is located if it extends across the boundaries of two or more counties. Upon filing of such designation, the state of Montana, its agencies, or political subdivisions may not acquire the properties so designated for public purposes other than reservoir sites and may not construct any public facilities except reservoirs. Supervisors may cancel a site designation by filing notice with the clerk and recorder of the county or counties affected.

History: **En. 76-118 by Sec. 1, Ch. 418, L. 1977; R.C.M. 1947, 76-118.**

76-15-408. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the renewable resource fund. The department of natural resources and conservation shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts.

History: **En. 76-119 by Sec. 2, Ch. 418, L. 1977; R.C.M. 1947, 76-119.**

76-15-409. Purposes of off-stream storage. The reservoirs shall provide water storage for appropriators within the conservation district and shall provide water for additional beneficial uses. The reservoir may be part of a federal reclamation project and may be used to provide flood control in the district.

History: **En. 76-120 by Sec. 3, Ch. 418, L. 1977; R.C.M. 1947, 76-120.**

76-15-410. Disposition of excess water. (1) The conservation district may dispose of water in excess of that needed to meet the requirements of prior appropriators by selling the excess water to any person who will apply the water to an agreed beneficial use within the state.

(2) In making sales under this section, the district shall allocate water on the basis of priorities established by each local district in accordance with 76-15-701 through 76-15-707 according to need and beneficial use.

History: En. 76-121 by Sec. 4, Ch. 418, L. 1977; R.C.M. 1947, 76-121.

76-15-411. Conditions to extend benefits to nonstate lands. As a condition to the extending of any benefits under this chapter to or the performance of work upon any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(11).

Part 5

Financial Aspects of Conservation Districts Loan Program

Part Cross-References

Appropriation by County Commissioners of federal revenue sharing funds granted to conservation districts, 7-6-2218.

76-15-501. Financial management. A conservation district and the supervisors thereof shall have the power to:

(1) borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness;

(2) also refund or retire an indebtedness or lien that may exist against the district or property thereof;

(3) fix and revise as necessary and collect rates, fees, tolls, rents, or other charges for the use of or for services, facilities, and materials furnished or provided, and revenues from these sources may be expended in carrying out the purposes and provisions of this chapter;

(4) cause taxes to be levied in the same manner provided for in this part for the purpose of paying any obligation of the district and to accomplish the purposes of this chapter in the manner herein provided;

(5) apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter;

(6) establish a conservation practice loan program as provided in this part.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(12) thru (15); amd. Sec. 18, Ch. 473, L. 1983.

76-15-502. Allocation of state funds among districts. (1) Unless otherwise provided by law, all money which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the department among the districts already organized or to be organized during the ensuing biennial fiscal period.

(2) In making allocations of the money, the department shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section and 76-15-503 from time to time among districts which may be organized after the initial allocations are made but within the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part); amd. Sec. 5, Ch. 473, L. 1983; amd. Sec. 5, Ch. 76, L. 1985.

76-15-503. Permissible uses of state money. All money allocated to a district by the department shall be available to the supervisors of the district for all administrative and other expenses of the district under this chapter and for all administrative and other expenses of the board of adjustment established or to be established by the district.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part).

76-15-504. Repealed. Sec. 8, Ch. 76, L. 1985.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(3).

76-15-505. Authorization to borrow money — limitations. (1) If, after the levy of the annual assessments for the current year, the board finds that, because of some unusual or unforeseen cause, funds raised through the collection of the assessments and from other sources will not be sufficient for the proper maintenance and operation of the district and the works therein, the board may:

(a) borrow additional funds needed to an amount not to exceed 50 cents per acre for the lands within the district and may pledge the credit of the district for the payment of the same; or

(b) request the county commissioners to issue and register warrants in anticipation of further collections.

(2) The board shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants shall not exceed 90% of the assessment for the year.

History: En. Sec. 12, Ch. 291, L. 1969; R.C.M. 1947, 76-220.

76-15-506. Bonds authorized — election. (1) Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided for by this part and part 6 for the cost of works.

(2) The board of supervisors may call a special election to vote upon the proposition of issuing the bonds or may submit the proposition as a special question at a regular or general election. If from the returns of the election it appears that the majority of votes cast at such election was in favor of and assented to the incurring of the indebtedness, then the board of supervisors may by resolution provide for the issuance of such bonds.

(3) The authorization of such undertaking, the form, and content shall be carried out in accordance with 7-7-4426, 7-7-4427, and 7-7-4432 through 7-7-4435. Validity of such bonds, use of revenue, and refunding shall be in

accordance with the provisions of 7-7-4425, 7-7-4430, 7-7-4501 (2) and (3), and 7-7-4502 through 7-7-4505.

(4) Any bonds issued under this part and part 6 have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 15, Ch. 291, L. 1969; amd. Sec. 19, Ch. 431, L. 1971; R.C.M. 1947, 76-223; amd. Sec. 394, Ch. 571, L. 1979.

76-15-507. Investment of funds. The board of supervisors shall have the power and authority to direct the investment of funds in a debt service fund in interest-bearing securities whenever in their judgment the same may be to the best interests of the district. But all such securities shall be converted into cash in time to meet the principal on the bonds payable from such debt service fund promptly at their maturity.

History: En. Sec. 13, Ch. 291, L. 1969; R.C.M. 1947, 76-221; amd. Sec. 28, Ch. 298, L. 1983.

76-15-508. Management of surplus funds. The board of supervisors of a conservation district may invest any surplus funds of the district not needed for immediate use in the operations of the district or its activities, to pay bonds or coupons, or to meet current expenses in interest-bearing bonds or securities of the United States or of any agency of the United States if the bonds are guaranteed by the United States or in bonds of the state of Montana or any county or municipal corporation in said state. The board of supervisors of said district may require any funds of the district to be deposited with such depository or bank as may be designated by the board and likewise shall have authority to require the treasurer of the district to take from such depository a bond with corporate surety to ensure payment of any such deposit or to require such depository to pledge securities of the same kind as the district is authorized to invest its funds in to ensure payment of any such deposit.

History: En. Sec. 14, Ch. 291, L. 1969; amd. Sec. 18, Ch. 431, L. 1971; R.C.M. 1947, 76-222; amd. Sec. 1, Ch. 135, L. 1991.

76-15-509 and 76-15-510 reserved.

76-15-511. Estimate of money to be raised by assessment. The supervisors of the district shall on or before the first Monday of July of each year furnish the board of county commissioners an estimate in writing of the amount of money to be raised by assessment which is needed for the next ensuing fiscal year.

History: En. Sec. 4, Ch. 253, L. 1963; amd. Sec. 2, Ch. 152, L. 1965; R.C.M. 1947, 76-204.

76-15-512. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district and to fund a conservation practice loan program in those districts having elected to establish such a program.

History: En. Sec. 6, Ch. 253, L. 1963; amd. Sec. 5, Ch. 291, L. 1969; R.C.M. 1947, 76-206; amd. Sec. 19, Ch. 473, L. 1983.

76-15-513. Division between counties of money to be raised by regular and special assessment. (1) If the district lies in more than one county, the supervisors of the district shall divide the amount of the estimate of the regular assessment in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county.

(2) The estimates of the special assessments shall be divided in proportion to the value of land lying within the project area.

History: **En. Sec. 5, Ch. 253, L. 1963; amd. Sec. 4, Ch. 291, L. 1969; R.C.M. 1947, 76-205.**

76-15-514. Regular and special assessments. Assessments levied pursuant to this part and part 6 shall be known as regular and special assessments.

History: **En. Sec. 7, Ch. 253, L. 1963; amd. Sec. 6, Ch. 291, L. 1969; R.C.M. 1947, 76-207.**

76-15-515. Maximum regular assessment. Except as provided in 76-15-531 and 76-15-532, the regular assessment in any one year may not exceed 1 1/2 mills on the dollar of total taxable valuation of real property within the district. The valuation must be determined according to the last assessment roll.

History: **En. Sec. 8, Ch. 253, L. 1963; amd. Sec. 3, Ch. 152, L. 1965; amd. Sec. 7, Ch. 291, L. 1969; amd. Sec. 15, Ch. 431, L. 1971; R.C.M. 1947, 76-208; amd. Sec. 6, Ch. 473, L. 1983; amd. Sec. 3, Ch. 573, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 573 at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 1993.

76-15-516. Levy of regular and special assessments. (1) The board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the ".... (name of district) conservation district regular assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

(2) Subject to the conditions of 76-15-531 and 76-15-532, the board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the ".... (name of district) conservation district special administrative assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

(3) The board of county commissioners of each county in which any portion of a project area lies may, annually at the time of levying county taxes, levy an assessment not to exceed 3 mills on the taxable real property within the project area. The levy must be known as ".... (name of the project area) special assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

History: **En. Sec. 9, Ch. 253, L. 1963; amd. Sec. 4, Ch. 152, L. 1965; amd. Sec. 8, Ch. 291, L. 1969; amd. Sec. 16, Ch. 431, L. 1971; R.C.M. 1947, 76-209; amd. Sec. 7, Ch. 473, L. 1983; amd. Sec. 4, Ch. 573, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 573 inserted (2) relating to a conservation district special administrative assessment on taxable real property; and made minor changes in style. Amendment effective July 1, 1993.

76-15-517. Computation of rate of assessment. The board of county commissioners shall determine the rate of assessment by deducting 15% for anticipated delinquencies from the total assessed value of the taxable real property in the district and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of $100, it shall be taken as a full cent.

History: En. Sec. 10, Ch. 253, L. 1963; amd. Sec. 5, Ch. 152, L. 1965; amd. Sec. 9, Ch. 291, L. 1969; amd. Sec. 17, Ch. 431, L. 1971; R.C.M. 1947, 76-210; amd. Sec. 8, Ch. 473, L. 1983.

76-15-518. Certification of assessment to assessor — entry on assessment roll. The board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in this part or part 6. The assessment shall be certified to the county assessor of each of the respective counties and entered on the assessment roll.

History: En. Sec. 11, Ch. 253, L. 1963; R.C.M. 1947, 76-211.

76-15-519. Application of general law on levy and collection. The provisions of law relating to the levy and collection of county taxes and the duties of county officers with respect thereto, insofar as they are applicable and not in conflict with this part and part 6, are hereby adopted and made a part hereof.

History: En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).

Cross-References

County taxation, Title 7, ch. 6, part 25.

76-15-520. Liability of county officers. The county officers referred to in 76-15-519 are liable on their several official bonds for the faithful discharge of their duties under this part and part 6.

History: En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).

Cross-References

Official bonds of county officers, 7-4-2212.

76-15-521. Principal county defined. "Principal county" as used in this part means the county in which all or the greatest portion of the land of a district is situated. The principal county remains the same regardless of any change in boundaries.

History: En. Sec. 13, Ch. 253, L. 1963; R.C.M. 1947, 76-213.

76-15-522. Settlements by county treasurers other than of principal county. The treasurers of each of the counties other than the principal county shall, not less than twice a year or upon order of the supervisors of the district, settle with such supervisors and pay to the treasurer of the principal county all money belonging to the district and in their possession.

History: En. Sec. 14, Ch. 253, L. 1963; R.C.M. 1947, 76-214.

76-15-523. Depository of district funds. The treasury of the principal county is the depository of all of the county tax funds of the district. The district may receive upon demand all or a portion of the district funds from the county treasury and deposit the funds in a bank or financial institution in such account as the board of supervisors considers appropriate for the operation and administration of the district.

History: En. Sec. 15, Ch. 253, L. 1963; amd. Sec. 10, Ch. 291, L. 1969; R.C.M. 1947, 76-215; amd. Sec. 9, Ch. 473, L. 1983.

76-15-524. Receipt and crediting of district funds — responsibility on bond. The treasurer of the principal county shall receive and receipt for all county tax money of the district and for all loan repayments and administrative fees or charges under a conservation practice loan program and place the same to the credit of the district. He is responsible on his official bond for the safekeeping and disbursement, in the manner provided in this part and part 6, of the money of the district held by him.

History: En. Sec. 16, Ch. 253, L. 1963; amd. Sec. 11, Ch. 291, L. 1969; R.C.M. 1947, 76-216; amd. Sec. 20, Ch. 473, L. 1983.

76-15-525. Payment of district money — warrants. The treasurer of the principal county shall pay out money of the district only upon warrants of the county auditor or, in those counties not having an auditor, the county clerk and recorder, drawn upon order of the supervisors of the district and signed by at least two of such supervisors.

History: En. Sec. 17, Ch. 253, L. 1963; R.C.M. 1947, 76-217.

76-15-526. Treasurer's reports. The treasurer shall report in writing at each regular meeting of the supervisors and as often at other times as the supervisors may request the amount of money on hand and the receipts and disbursements since his last report. Such report shall be verified.

History: En. Sec. 18, Ch. 253, L. 1963; R.C.M. 1947, 76-218.

76-15-527. Purpose of expenditures. All money collected under 76-15-511 through 76-15-526, 76-15-531, and 76-15-532 must be expended for the purposes provided in Title 76, chapter 15.

History: En. Sec. 19, Ch. 253, L. 1963; R.C.M. 1947, 76-219; amd. Sec. 21, Ch. 473, L. 1983; amd. Sec. 5, Ch. 573, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 573 inserted "76-15-531, and 76-15-532" and at end substituted "Title 76, chapter 15" for "76-15-502 and 76-15-503 and for an established conservation practice loan program"; and made minor changes in style. Amendment effective July 1, 1993.

76-15-528. Lien for special assessments. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this chapter, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied from the date on which such assessment is levied. This lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: En. Sec. 23, Ch. 291, L. 1969; R.C.M. 1947, 76-231; amd. Sec. 19, Ch. 266, L. 1979.

Cross-References

Liens, Title 71, ch. 3.

76-15-529. Assessments unaffected by misnomers and mistakes relating to ownership. When under the provisions of this part and part 6 special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

History: En. Sec. 24, Ch. 291, L. 1969; R.C.M. 1947, 76-232.

76-15-530. Conservation district account — administration. (1) There is a conservation district account in the state special revenue fund of the state treasury. Money is paid into this account under 15-35-108. The state treasurer shall draw warrants payable from this account on order from the department of natural resources and conservation.

(2) The department of natural resources and conservation shall administer the conservation district account. The money shall be distributed from the account to the conservation districts on the basis of need. A conservation district may submit an application to the department of natural resources and conservation for a grant of funds for purposes that conservation districts are authorized to perform.

(3) A conservation district is not eligible to receive a grant unless it has exhausted its authorized mill levies.

(4) The department of natural resources and conservation may adopt rules implementing this section that provide for the form and content of applications and the criteria, terms, and conditions for making grants.

History: En. Sec. 2, Ch. 479, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

76-15-531. Special administrative assessment permitted — voter approval. (1) (a) In addition to the levy authorized in 76-15-515 and 76-15-516(3), the supervisors of a conservation district may levy an annual special administrative assessment, not to exceed the amount determined under subsection (1)(b) each year, for administrative costs and expenses of the district if, at a regularly scheduled election or special election, the qualified electors of the district approve the imposition of the additional assessment.

(b) The annual levy authorized by this section may not exceed the difference between the amount raised by the annual mill levy authorized under 76-15-515 and $20,000.

(c) Nonmill-levy revenue that is distributed based on the relative proportion of mill levies may not be distributed to the special administrative assessment.

(2) The special administrative assessment question may be presented to the qualified electors of the district by resolution of the supervisors.

(3) If the conservation district is located in more than one county, the special administrative assessment question must be presented to and approved by the qualified electors who reside in the district from each county.

(4) The resolution referring the special administrative assessment question must state:

(a) the rate of the assessment;

(b) the amount of money anticipated to be raised by the assessment; and

(c) the purposes for which the special administrative assessment revenue may be used.

History: En. Sec. 1, Ch. 573, L. 1993.

Compiler's Comments

Effective Date: Section 8, Ch. 573, L. 1993, provided that this section is effective July 1, 1993.

76-15-532. Limitations — reduction or repeal of special administrative assessment. (1) In each year following the approval of the special administrative assessment as provided in 76-15-531, the rate of the levy imposed for the special administrative assessment may not raise more revenue than was proposed in the resolution and approved by the qualified electors of the district.

(2) If the supervisors of the district reduce the amount of the special administrative assessment, they may not raise the assessment without the approval of the qualified electors of the district.

(3) On or before the second Monday in July, a petition, signed by at least 50% of the eligible voters within the district, calling for a reduction in or the repeal of the special administrative assessment for the ensuing fiscal year may be presented to the supervisors. Following verification of the signatures on the petition, the supervisors shall reduce or repeal the administrative assessment as specified in the petition.

History: En. Sec. 2, Ch. 573, L. 1993.

Compiler's Comments

Effective Date: Section 8, Ch. 573, L. 1993, provided that this section is effective July 1, 1993.

76-15-533 through 76-15-540 reserved.

76-15-541. Conservation practice loan program — definition. (1) A conservation district may establish and administer a conservation practice loan program pursuant to 76-15-541 through 76-15-547.

(2) A conservation practice loan may be made to a land occupier who is an agriculture producer within the exterior boundaries of the district. The conservation practice must be constructed, operated, developed, and maintained within the district.

(3) A conservation practice is the construction, operation, development, or maintenance of an erosion control and prevention operation, a work of improvement for flood prevention, and the conservation, development, use, and disposal of water within a district in furtherance of the purposes and policies of this chapter. Conservation practices include those practices pertaining to acceptable land use conversion as determined by a majority of the district supervisors with the advice of the United States soil conservation service.

History: En. Sec. 11, Ch. 473, L. 1983.

76-15-542. Conservation practice loan account. (1) The supervisors of a district may allocate a portion of the regular assessment for each fiscal year to a segregated and separate conservation practice loan account within the treasury of the principal county for the purpose of providing funds for conservation practice loans.

(2) Conservation practice loan repayments, including principal and interest, and administrative fees or charges for loans must be deposited in the conservation practice loan account.

(3) The funds in the conservation practice loan account may be used for conservation practice loans and for the administrative expenses of a conservation practice loan program.

History: En. Sec. 12, Ch. 473, L. 1983.

76-15-543. Application for loan. (1) An application for a loan must be in the form prescribed by the district supervisors and contain or be accompanied by any information necessary to adequately describe the proposed conservation practice and necessary for evaluation of the proposed conservation practice under the criteria contained in 76-15-544 and 76-15-545.

(2) The application must include a conservation plan, which may be prepared in consultation with the United States soil conservation service.

History: En. Sec. 13, Ch. 473, L. 1983.

76-15-544. Eligibility for loan. A district may award a loan to a land occupier to finance a conservation practice only if a majority of the district supervisors find, based on the application and the supervisors' investigation and evaluation of the proposal, that:

(1) the conservation practice will be economically feasible;

(2) the conservation practice will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;

(3) the applicant has adequate financial resources to construct, operate, develop, and maintain the conservation practice; and

(4) the applicant is credit-worthy and is able and willing to enter into a contract with the district for loan repayment and for construction, operation, development, and maintenance of the proposed conservation practice.

History: En. Sec. 14, Ch. 473, L. 1983.

76-15-545. Criteria for evaluation of loan applicants — preferences. (1) The district supervisors shall apply the following criteria in ranking applications for a conservation practice loan that is eligible for funding under 76-15-544:

(a) the extent and desirability of the conservation need and resource benefit as determined in the district's annual and long-range plans;

(b) the feasibility and practicality of the project;

(c) the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and recreation;

(d) the extent and desirability of associated public benefits in addition to any private benefits the project or activity may provide; and

(e) any other factor that, in the district supervisors' judgment, is important to the evaluation of the conservation practice in light of the purposes, policies, and objectives of this chapter.

(2) Among applications for a loan in which the proposed conservation practices are substantially equal in ranking under subsection (1), a district shall give preference to:

(a) applicants who have not previously received a conservation practice loan; and

(b) applications for a group or cooperative conservation practice.

History: En. Sec. 15, Ch. 473, L. 1983.

76-15-546. Terms and conditions of loan. A conservation practice loan is subject to the following terms and conditions:

(1) The district shall obtain such security interest in real estate as would be obtained by a reasonable, careful, and prudent lender.

(2) The term of the loan may not be greater than the life of the project, and in no case may it exceed 30 years.

(3) A current appraisal of real estate offered as security and a commitment for title insurance on that land must be secured by the borrower at his expense. All costs incident to the loan and loan closing, other than administrative costs of the district, must be paid by the borrower.

(4) A conservation practice must be completed according to United States soil conservation service standards and specifications, if applicable.

History: En. Sec. 16, Ch. 473, L. 1983.

76-15-547. Rules for loan program. The district shall adopt rules in accordance with the Montana Administrative Procedure Act:

(1) prescribing the form and content of applications for loans and plans for the resource conservation practice;

(2) governing the application of the criteria and preferences for awarding loans;

(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(4) providing for the confidentiality of financial statements submitted;

(5) prescribing the conditions for making loans;

(6) establishing the interest rate for the loans; and

(7) determining the type and amount of security interest in real estate that will be accepted and any conditions to be made upon the security interest.

History: En. Sec. 17, Ch. 473, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 6

Project Areas

76-15-601. Establishment of project areas — special assessments. Whenever the public interest or convenience may require and upon the petition of a county, city, town, cooperative grazing association, or other special purpose district or by more than 50% of the qualified electors affected thereby, the board of supervisors is hereby authorized and empowered to establish project areas for carrying out projects to accomplish one or more of the purposes of the district and within which area special assessments can be made for carrying out project purposes.

History: En. Sec. 16, Ch. 291, L. 1969; amd. Sec. 20, Ch. 431, L. 1971; R.C.M. 1947, 76-224.

76-15-602. Hearing on petition to establish project area. Upon receipt of a petition to establish a project area, the board or boards of supervisors shall cause due notice to be given of a public hearing on the petition.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-603. Investigation of need for project area. Prior to the hearing, the board or boards of supervisors shall make or cause to be made an investigation of the need for establishment of the proposed project area and shall prepare a report of their findings.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-604. Protest procedure. At any time within 15 days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area, or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse thereon the date of its receipt by him.

History: En. Sec. 18, Ch. 291, L. 1969; amd. Sec. 22, Ch. 431, L. 1971; R.C.M. 1947, 76-226(part).

76-15-605. Board decision. (1) The report of 76-15-603 shall be presented and read at the hearing on the petition.

(2) At the public hearing on the petition, the board of supervisors shall proceed to hear and pass upon all protests made and its decision shall be final and conclusive except when owners of more than 50% of the land in the proposed project area protest the project. If owners of more than 50% of the land protest the project, no further action may be taken for a period of 6 months from the date of the hearing, after which a new petition may be filed.

(3) If the board or boards of supervisors find that it is not feasible, desirable, or practical to establish the proposed project area, they shall make an order denying the petition and shall state therein their reasons for so doing.

(4) If, however, the board finds that the project is desirable, proper, and necessary, it shall grant the petition, establish the boundaries of the proposed project area, and notify the county election administrator that an election is to be held in the proposed area for the purpose of determining whether or not the project area shall be created.

History: En. Secs. 17, 18, Ch. 291, L. 1969; amd. Secs. 21, 22, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part), 76-226(part); amd. Sec. 395, Ch. 571, L. 1979.

76-15-606. Election procedure. (1) The question shall be submitted to the electors by ballot on which the words "For creation of proposed project area" and "Against creation of proposed project area" shall appear, with a square before each proposition and directions to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose creation of the project area.

(2) No person shall be entitled to vote at the election unless such person possesses all the qualifications required of electors under Title 13 and resides within the boundaries of the proposed project area and the county in which he proposes to vote.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-607. Notice of creation of project area. If the majority of the votes cast at the election are in favor of creating a project area, the board or boards of supervisors shall create the project area and shall file with the county clerk and recorder in each county in which there lies a portion of the project area a notice of creation of the project area setting forth the purposes of the area and the boundaries thereof.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-608. Description of work or project area. In all resolutions, notices, orders, and determinations, it shall be sufficient to briefly describe the work or the project area or both.

History: En. Sec. 19, Ch. 291, L. 1969; R.C.M. 1947, 76-227.

76-15-609. Area included in project area. A project area may include a part or all of any district or may include areas in more than one district.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-610. Administration of project area. The affairs of a project area shall be administered by the board or boards of supervisors or their authorized agents.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-611. Federal authority unaffected. (1) The provisions of this part do not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions. It is an express purpose and intent of this part to aid but not to interfere with the government of the United States or any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control.

(2) The provisions of this part may not be construed to impair, limit, or repeal any right whatsoever which the government of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights. It is a purpose of this part expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority.

History: En. Sec. 22, Ch. 291, L. 1969; R.C.M. 1947, 76-230; amd. Sec. 20, Ch. 266, L. 1979.

76-15-612. Duty to maintain improvements. Whenever any project petitioned for or created by the state or federal government has been made, built, constructed, erected, or accomplished as provided in this part, it is hereby made the duty of the board or boards of supervisors under whose jurisdiction the project area was created to adequately and suitably maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise in the way or manner as the board shall deem suitable and proper.

History: En. Sec. 25, Ch. 291, L. 1969; R.C.M. 1947, 76-233.

76-15-613 through 76-15-620 reserved.

76-15-621. Estimate of expenses of project area. (1) When a project area has been created, the board or boards of supervisors shall estimate the expenses of the project area from the date of its establishment until the end of the ensuing fiscal year and before July 1 in each year thereafter shall estimate project area expenses for the fiscal year ensuing.

(2) Estimates of project area expenses may include revenue needed to pay the interest or principal of any bonded debt, costs of rights-of-way, easements,

or other interest in property deemed necessary for the construction, operation, and maintenance of any projects therein.

History: **En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).**

76-15-622. Financing of project area expenses. (1) The expense of the project area may, in the discretion of the board or boards of supervisors, be financed in whole from revenue received by regular assessments or by revenue received in part from regular assessments and in part from special assessments.

(2) Upon adoption of a budget covering necessary expenses, the board or boards of supervisors shall send a copy of such budget or apportionment thereof to the board of county commissioners of each county in the project area and the city auditor of each city in the project area.

History: **En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).**

76-15-623. Administration of special assessment. (1) When the board or boards of supervisors have determined that a special assessment is necessary, the board of county commissioners of such county in which there lies any portion of a project area shall annually at the time of levying county taxes levy a special assessment of the taxable real property in the project area, not to exceed 3 mills. It shall be known as the "....(name of district) soil and water conservation district special assessment" and shall be sufficient to raise the income reported to it in the estimate of the supervisors.

(2) Each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all the lands to be assessed.

History: **En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).**

76-15-624. Disposition of funds — insufficient revenue. (1) Funds produced each year by this special tax levy shall be available until spent.

(2) If this special tax levy in any year does not produce sufficient revenue to pay the project area expenses, a fund sufficient to pay the same may be accumulated.

History: **En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).**

76-15-625. Limitation on special assessment. A special assessment to defray the expenses of a project area may be spread over a term of not to exceed 40 years.

History: **En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).**

Part 7

Land Use Regulations

76-15-701. Adoption of land use regulations. (1) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work.

(2) The supervisors shall not have authority to enact such land use regulations into law until after they shall have caused due notice to be given of their intention to order a referendum for submission of such regulations to

the qualified electors within the boundaries of the district for their indication of approval or disapproval of such proposed regulations and until after the supervisors have considered the result of such referendum.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(A); amd. Sec. 396, Ch. 571, L. 1979.

Cross-References

Cooperation with state agencies, 76-15-317.

76-15-702. Referendum on proposed land use regulations. (1) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum.

(2) The notices of the referendum shall recite the contents of such proposed ordinance or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots upon which the words "For approval of proposed ordinance No. ...., prescribing land use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No. ...., prescribing land use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance.

(3) The supervisors shall publish the result of the referendum. All registered electors within the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(B); amd. Sec. 397, Ch. 571, L. 1979.

76-15-703. Voter approval of proposed regulations required. The supervisors shall not have authority to enact such proposed ordinance into law unless a majority of the votes cast in such referendum shall have been cast for approval of the proposed ordinance. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-704. Regulations to have force of law. Land use regulations prescribed in ordinances adopted pursuant to the provisions of 76-15-701 through 76-15-707 by the supervisors of any district shall have the force and effect of law in the district and shall be binding and obligatory upon all occupiers of lands within such district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-705. Alteration of regulations. (1) Any qualified elector within such district may at any time file a petition with the supervisors asking that any or all of the land use regulations prescribed in any ordinance adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 be amended, supplemented, or repealed.

(2) Land use regulations prescribed in any ordinance adopted pursuant to the provisions of 76-15-701 through 76-15-707 shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in 76-15-701 through 76-15-707 for adoption of land use regulations.

(3) Referenda on adoption, amendment, supplementation, or repeal of land use regulations shall not be held more often than once in 6 months.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-706. Contents of land use regulations. (1) The regulations to be adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 may include:

(a) provisions requiring the carrying out of necessary engineering operations, including the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary structures;

(b) provisions requiring observance of particular methods of cultivation or grazing, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water conserving and erosion preventing plants, trees, and grasses, forestation and reforestation;

(c) specifications of cropping and range programs and tillage and grazing practices to be observed;

(d) provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(e) provisions for such other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion, threatened or existing, grazing and cropping programs, tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-707. Publication of regulations. Copies of land use regulations adopted under the provisions of 76-15-701 through 76-15-707 shall be printed and made available to all occupiers of land within the district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-708. Power to determine compliance with regulations. After a complaint shall have been filed with the supervisors charging a violation of the regulations, the supervisors shall have authority to go upon any lands within the district to determine whether land use regulations adopted under the provisions of 76-15-701 through 76-15-707 are being observed.

History: **En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(1).**

76-15-709. Enforcement of regulations — petition to district court. Where the supervisors of any district shall find that any of the provisions of land use regulations prescribed in any ordinance adopted in accordance with the provisions of 76-15-701 through 76-15-707 are not being observed on particular lands and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present a petition, duly verified, to the district court of the county in which the lands of the defendant may lie:

(1) setting forth:

(a) the adoption of the ordinance prescribing land use regulations;

(b) the failure of the defendant to observe such regulations and to perform particular work, operations, or avoidances as required thereby; and

(c) that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district; and

(2) praying the court:

(a) to require the defendant to perform the work, operations, or avoidances within a reasonable time; and

(b) to order that, if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations, or otherwise bring the condition of such lands into conformity with the requirements of such regulations and recover the costs and expenses thereof, with interest, from the defendant.

History: **En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(2).**

76-15-710. Court procedure after petition is filed. (1) Upon the presentation of such petition, the court shall cause process to be issued against the defendant and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(2) In all cases where the person in possession of lands who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

(3) The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances and may provide that, upon the failure of the defendant to initiate such performance within the time specified in the order of the court and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such land into conformity with the requirements of the regulations and recover the costs

and expenses thereof, with interest at the rate of 10% a year, from the defendant.

(4) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court, the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of 10% a year until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(3) thru (5); amd. Sec. 6, Ch. 76, L. 1985.

76-15-711 through 76-15-720 reserved.

76-15-721. Board of adjustment. (1) Where the supervisors of a district adopt an ordinance prescribing land use regulations in accordance with 76-15-701 through 76-15-707, they shall further provide by ordinance for the establishment of a board of adjustment.

(2) The board of adjustment shall consist of three members, each to be appointed for a term of 3 years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively.

(3) The members of each board of adjustment shall be appointed by the department with the advice and approval of the supervisors of the district for which the board has been established and may be removed by the department, upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason, the hearing to be conducted jointly by the department and the supervisors of the district. Members of the board of natural resources and conservation, employees of the department, and the supervisors of the district are ineligible to appointment as members of the board of adjustment.

(4) Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant.

(5) The members of the board of adjustment shall receive compensation for their services at the rate of $25 per day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the chairman of the board.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(1); amd. Sec. 7, Ch. 76, L. 1985.

76-15-722. Operation of board of adjustment. (1) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with this chapter and with the ordinance establishing the board of adjustment.

(2) The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such

other times as the board may determine. Any two members of the board constitute a quorum. The chairman or in his absence such other member of the board as he may designate to serve as acting chairman may administer oaths and compel the attendance of witnesses.

(3) All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(2); amd. Sec. 21, Ch. 266, L. 1979.

76-15-723. Petition for a variance. (1) Any qualified elector may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land use regulations prescribed by ordinance approved by the supervisors and praying the board to authorize a variance from the terms of the land use regulations in the application of the regulations to the lands occupied by the petitioner.

(2) Copies of the petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the department.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-724. Hearing on petition for a variance. (1) The board of adjustment shall fix a time for the hearing of the petition and cause due notice of the hearing to be given.

(2) The supervisors of the district and the department are entitled to appear and be heard at the hearing. A qualified elector within the district who objects to the authorizing of the variance prayed for may intervene and become a party to the proceedings. A party to the hearing before the board may appear in person, by agent, or by attorney.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-725. Board decision. (1) If, upon the facts presented at the hearing, the board determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.

(2) Upon the basis of the findings and determination, the board may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that will relieve the great practical difficulties or unnecessary hardship; will not be contrary to the public interest; and will be such that the spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 22, Ch. 266, L. 1979.

76-15-726. Appeal to district court from board decision. (1) A petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought; the supervisors of the district; or an intervening party may obtain a review of the order in any district court of the county in which the lands of the petitioner lie by filing in the court a petition praying that the order of the board be modified or set aside.

(2) A copy of the petition shall immediately be served upon the parties to the hearing before the board, and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered and the findings, determination, and order of the board.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-727. Court proceedings. (1) Upon the filing, the court shall cause notice thereof to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined therein and may grant such temporary relief as it deems just and proper and make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the board.

(2) A contention that is not urged before the board may not be considered by the court unless the failure or neglect to urge the contention is excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, are conclusive.

(3) If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file the modified or new findings which, if supported by evidence, are conclusive and shall file with the court its recommendations, if any, for the modification or setting aside of its original order.

(4) The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

Part 8

Alteration and Termination of Conservation Districts

76-15-801. Change of district name. Petitions for changing the name of a district organized under this chapter may be filed with the department. The petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name. If the department determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of that determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of the certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(1).

76-15-802. Procedure to add territory to a district. Petitions for including additional territory within an existing district may be filed with the department, and the proceedings provided for in part 2 in the case of petitions to organize a district shall be followed in the case of petitions for the inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as may be in the form prescribed in part 2 for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion is less than 10, the petition may be filed when signed by a majority of the qualified electors of the area, and in that case no referendum need be held. In referenda upon petitions for the inclusion, all qualified electors within the proposed additional area are eligible to vote.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(10).

76-15-803. Combination or division of districts. (1) A petition may be filed with the department for the division of any district or the combination of any two or more districts or for the division of a district and the combination of any divided part thereof with any other district. Any or all of these actions may be initiated by the filing of a single petition with the department. The petition shall be signed by a majority of the members of each of the governing bodies of the affected districts. The department shall prescribe the form for the petition. Upon the filing of the petition, the department shall within 30 days give due notice of public hearing upon the petition. All qualified electors within the affected districts and all other interested parties are entitled to attend the hearing and be heard. After the hearing, the board of natural resources and conservation upon the record of the hearing shall determine whether the proposed division, the combination, or division and combination of territory is administratively practicable and feasible. In making the determination the board shall give due regard to the legislative determinations set forth in 76-15-101 and 76-15-102 and to the considerations enumerated in 76-15-201 through 76-15-216, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(2) If the board determines that the proposed division, combination, or division and combination is administratively practicable and feasible, the board shall effect the proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of the districts. If the determination is in the negative, the board shall make and record that determination and shall deny the petition. After 6 months from the denial of the petition, a new petition may be filed.

(3) Upon the division of a district, the supervisors thereof shall allocate the property, rights, and liabilities (including contractual obligations) of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units, the degree and extent of soil erosion therein, and other relevant factors. A statement of the allocation shall be filed with the department within 30 days after the notification of the board's determination in favor of the division of the district. Upon the failure of the supervisors to make or to agree upon the allocation, it shall be made by the department after such hearing as the department considers necessary and with due regard for the standards set out in this subsection for making the allocations.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(2) thru (4).

76-15-804. Petition to discontinue all or part of a district. (1) At any time after 5 years after the organization of a district under this chapter, 10% or more of the qualified electors within the boundaries of the district may file a petition with the department praying that the board terminate the operations of the district or a part of the district and discontinue the existence of the district or that part of the district.

(2) The department may conduct such public meetings and public hearings upon the petition as are necessary to assist it and the board in the consideration thereof.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(1); amd. Sec. 10, Ch. 473, L. 1983.

76-15-805. Referendum on question of discontinuance. (1) Within 60 days after the petition has been received by the department, it shall give due notice of the holding of a referendum and shall supervise the referendum and issue appropriate regulations governing the conduct thereof. The question is to be submitted by ballots upon which the words "For terminating the existence of the .... (name of the conservation district or part of the district to be here inserted)" and "Against terminating the existence of the .... (name of the conservation district or part of the district to be here inserted)" shall appear with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose discontinuance of the district or a part of the district.

(2) All qualified electors within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relative thereto shall invalidate the referendum or the result thereof if notice thereof is given substantially as herein provided and the referendum is fairly conducted.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(2).

76-15-806. Board decision in case of petition for discontinuance of entire district. (1) In the case of petitions for discontinuance of a district, the department shall publish the result of the referendum and the board shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the board determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition.

(3) If the board determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(a).

76-15-807. Board decision in case of petition for discontinuance of portion of district. (1) In the case of petitions for discontinuance of part of a district, the department shall publish the result of the referendum and the board shall thereafter consider and determine whether the continued operation of a part of the district within the defined boundaries is administratively practicable and feasible.

(2) If the board determines that the continued operation of the district is not administratively practicable and feasible with a part of the district discontinued, it shall record that determination and deny the petition.

(3) If the board determines that the continued operation of the district is administratively practicable and feasible with a part of the district discontinued, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(b).

76-15-808. Criteria for board decision on discontinuance. (1) In making the determination, the board shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district or part of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) However, the board may not determine that the continued operation of the district or part of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district or part of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(4).

76-15-809. Procedure to terminate district. (1) Upon receipt from the department of a certification of the board that the board has determined that the continued operation of the district or part of the district is not administratively practicable and feasible, pursuant to 76-15-804 through 76-15-810, the supervisors shall immediately proceed to terminate the affairs of the district or part of the district.

(2) The supervisors shall dispose of all property belonging to the district or part of the district at public auction and shall pay over the proceeds of the sale to be covered into the state treasury.

(3) The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of the district or part of the district and shall transmit with the application the certificate of the board, setting forth the determination of the board that the continued operation of the district or part of the district is not administratively practicable and feasible. The application shall recite that the property of the district or part of the district has been disposed of and the proceeds paid over as provided in 76-15-804 through 76-15-810 and shall set forth a full accounting of the properties and proceeds of the sale.

(4) The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in his office.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(5).

76-15-810. Effect of termination. (1) Upon issuance of a certificate of dissolution under 76-15-809, all ordinances and regulations theretofore adopted and in force within the district or in that part of the district are void.

(2) All contracts previously entered into, to which the district or supervisors are parties, remain in effect for the period provided in those contracts. The department shall be substituted for the district or supervisors as party to the contracts if the total district is discontinued. In this case the department is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate the contracts by mutual consent or otherwise as the supervisors of the district would have had.

(3) The dissolution does not affect the lien of any judgment entered under 76-15-708 through 76-15-710 or the pendency of an action instituted under those sections, and the department succeeds to all rights and obligations of the district or supervisors as to those liens and actions.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(6).

CHAPTER 16

GRAZING DISTRICTS

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76-16-101. Short title. This chapter may be cited as the "Grass Conservation Act".

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).

76-16-102. Purpose. The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit grazing districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ranch properties as defined herein.

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).

76-16-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months old or over.

(2) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1) and does not include fees.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302, except where the term is used in connection with the board of directors of a state district.

(4) "Commensurate property" means land privately owned or controlled which is not range as herein defined.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Dependent commensurate property" is commensurate property which requires the use of range in connection with it to maintain its proper use and which produces or whose owner furnishes as part of his past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range and which has been used in connection with the range for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934,

or in the case of districts organized after March 15, 1945, for a 5-year period immediately preceding the date of organization of such districts.

(7) "Grazing preference" is a right to obtain a grazing permit from a state district.

(8) "Permits" are evidence of grazing privileges granted by state districts.

(9) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

(10) "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

(11) "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors and also includes all lands owned or controlled by the state district or its members.

History: En. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945; amd. Sec. 36, Ch. 253, L. 1974; R.C.M. 1947, 46-2302(part).

76-16-104. Role of the department. (1) The department of natural resources and conservation shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the department of state lands and boards of county commissioners, and supervise and coordinate the formation and operation of districts which may be incorporated under this chapter.

(2) The department may act in an advisory capacity to the department of state lands and boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or without the boundaries of state districts in conformity with recognized conservation and stabilization policies.

History: En. Secs. 1, 17, Ch. 208, L. 1939; amd. Secs. 35, 47, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part), 46-2317.

76-16-105. Powers of the department. The department may:

(1) prepare and standardize various forms to be used by the state districts and supervise or regulate the organization and operation of state districts;

(2) issue citations directed to any person requiring his attendance before the department or the board and subpoena witnesses and pay such expenses as would be allowed in a court action;

(3) require an officer or director of a state district to submit records of the state district to the department for the purpose of aiding an investigation conducted by the department;

(4) hold hearings on any matters affecting the department;

(5) require state districts to furnish itemized financial reports annually;

(6) cooperate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part).

76-16-106. Department fees. (1) The department may impose fees against the several state grazing districts of the state in an amount not in excess of 15 cents per animal unit, based upon the number of animal units per year for which the district grants permits, to defray expenses incurred by the department in carrying out its powers and duties under this chapter.

(2) These fees shall be held in the state special revenue fund to be expended by order and direction of the department for the administration of the department's functions under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the district is provided with a full report from the department of all money collected and expended by it for its fiscal year next preceding that date, the department may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963; amd. Sec. 1, Ch. 20, L. 1971; amd. Sec. 52, Ch. 253, L. 1974; R.C.M. 1947, 46-2331; amd. Sec. 1, Ch. 34, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

76-16-107. Range for wild game animals. In each state district a sufficient carrying capacity of range shall be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the district. The department may act in an advisory capacity to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts. The department shall encourage the transfer of beaver from streams where they are doing damage to other streams where they are needed.

History: En. Sec. 30, Ch. 208, L. 1939; amd. Sec. 53, Ch. 253, L. 1974; R.C.M. 1947, 46-2332; amd. Sec. 2, Ch. 218, L. 1979.

76-16-108. Nature of rights. (1) Preferences or rights under this chapter through the creation of the district or the issuance of permits or preferences are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the district excepting as herein provided.

(2) Any person who chooses to become a member of any state district is bound by all the provisions of this chapter and is limited to the statutory remedies therein contained, and no court shall have jurisdiction to consider any right claimed under this chapter excepting only by judicial review from the final decision of the commission as herein provided.

History: (1)En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; Sec. 46-2314, R.C.M. 1947; (2)En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; Sec. 46-2308, R.C.M. 1947; R.C.M. 1947, 46-2308(part), 46-2314(3).

76-16-109. Appeal procedure. (1) Notice of a decision of a state district shall be given in writing by the secretary of the state district to the interested parties or their attorneys by registered or certified mail at the address as shown on the records of the district.

(2) A person affected by the decision of a state district may appeal therefrom to the board which shall hear and decide all those appeals. An appeal from the decision of the district to the board may be taken by filing written notice of the appeal with the department and by filing a copy of the notice of appeal with the secretary of the district and by serving a copy of the notice of appeal by registered or certified mail upon any interested parties who have appeared or their attorneys within 60 days after receiving written notice of the decision of the district. The appellant shall also file with the department proof by affidavit of the filing and service of the notice of appeal. The appeal to the board shall be taken and review thereof had upon the record

of any hearing conducted and considered by the state district; however, the board may, at its discretion and for good cause shown, permit additional testimony to be submitted.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(part).

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

76-16-110. Administrative procedure act applicable. The Montana Administrative Procedure Act applies to this chapter.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(3).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

76-16-111. What constitutes receipt of notice. In all cases where notices are given permittees under this chapter by registered or certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices shall be considered received by the permittee when deposited in the United States post office by the district or by the department.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(8).

Part 2

Establishment of Districts

76-16-201. Procedure to incorporate state district. (1) If three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the department together with a plat showing the proposed boundaries of the area.

(2) The statement shall set forth the name of the proposed state district, the county or counties in which the proposed state district is located, and the names and addresses of all operators of land and livestock units within the area. The department may require any additional information it considers necessary.

(3) On receipt of the statement and plat and any additional information, the department shall fix a time and place of a hearing for approval within the district or county, which may not be less than 30 days or more than 60 days after receipt of the statement.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-202. Notice and hearing on question of incorporation. (1) The persons deciding to incorporate the state grazing district shall then cause notice of the hearing to be given by publishing a notice prescribed by the department once a week for 2 consecutive weeks, the first publication to be at least 30 days prior to the date of hearing, in a newspaper of general circulation in the area.

(2) The department for and on behalf of the board shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation. The record taken upon the hearing, together with the report of the department, shall be submitted to the board.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-203. Certificate of approval. If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the district, the board may issue a certificate of approval.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-204. Articles of incorporation. (1) Upon the issuance of the certificate of approval, three or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the office of the secretary of state without payment of fees.

(2) The articles shall be accompanied by the certificate of approval and signed, sealed, and acknowledged. The articles, as prescribed by the department, shall substantially state the following:

(a) the name of the state district, the last four words of which shall be "cooperative state grazing district";

(b) the county or counties in which the state district is located and the place where the principal office and business of the state district will be conducted;

(c) the membership fee for each member of the state district, which may not be more than $5;

(d) the term for which the state district is incorporated, which may not exceed 40 years;

(e) the names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district;

(f) the powers of the state district, which may not be inconsistent with this chapter;

(g) the officers of the state district, their principal duties, and the principal duties of the board of directors;

(h) the purpose for which the state district is incorporated.

History: En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).

Cross-References

Formation of nonprofit corporation, Title 35, ch. 2, part 2.

76-16-205. Issuance of certificate of incorporation. If the articles substantially comply with the requirements set forth in 76-16-204 and are accompanied by the certificate of approval, the secretary of state shall issue to the state district a certificate of incorporation.

History: En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).

76-16-206. Amending articles of incorporation. (1) A state district may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the department. The only notice of the meeting which is necessary is the notice of meetings of members as required by the bylaws of the district. The amended articles of incorporation and bylaws shall be submitted to the department for approval. Upon approval, the department shall issue a certificate of approval. The amended articles of incorporation shall be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of incorporation are amended, the amendment shall be filed with the county clerk or clerks.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the district possesses the same powers and shall be subject to the same obligations as if incorporated under this chapter.

History: En. Secs. 11, 18, Ch. 208, L. 1939; amd. Secs. 41, 48, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part), 46-2318.

76-16-207. Filing of map or plat of district. A state district shall, upon completion of its organization, file with the county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the state district and a copy of its articles of incorporation. If the boundaries of a state district are changed and the changes are approved by the board after a hearing thereon before the department, the state district shall file with the county clerk or clerks a map or plat indicating the changed boundaries.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part).

76-16-208. Adoption of bylaws. A state district incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the department. The bylaws may be amended or revised with the approval of the department.

History: En. Sec. 15, Ch. 208, L. 1939; amd. Sec. 45, Ch. 253, L. 1974; R.C.M. 1947, 46-2315.

76-16-209. Alteration of district. (1) A state district may change the boundaries of the district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the board after a hearing thereon before the department.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the board after a hearing thereon before the department.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(11).

76-16-210. Request for dissolution of district. A state district with the written consent of three-fourths of its permittee members may at any time request the board of natural resources and conservation to dissolve the state district.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).

76-16-211. Dissolution of district by board. (1) If a state district ceases to function and it appears to the board that the reinstatement and future operation of the district is no longer feasible, beneficial, and desirable to those who own or control more than 50% of the lands included in the district, the board, after a hearing thereon and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the district, may dissolve the district.

(2) A notice of the dissolution shall be filed by the department with the secretary of state and the clerk and recorder of the county or counties in which the district is located.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(1)(b).

76-16-212. Distribution of district assets. (1) When a hearing on the request for dissolution has been held before the department and the board's consent has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or in both. Distribution shall first be made with the approval of the department to creditors up to the amount of their claims. Distribution shall then be made with the approval of the department to permittee members upon the basis of their proportionate interest in the assets.

(2) If assets must be liquidated, the directors shall offer them for sale at public auction after publication of a notice of the sale once a week for 2 successive weeks in a newspaper of general circulation within the state district.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).

76-16-213. Final report on dissolution proceedings. A final report of all dissolution proceedings shall be made to the department by the directors. Upon the approval of the report by the department, the board shall order the state district dissolved.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).

Part 3

Organization, Administration, and Operation

Part Cross-References

Maintenance of fences, 76-16-320.

Animals unlawfully running at large, Title 81, ch. 4, part 2.

Herd districts, Title 81, ch. 4, part 3.

76-16-301. Powers and duties of directors. The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the department as provided in this chapter.

History: En. Sec. 13, Ch. 208, L. 1939; amd. Sec. 43, Ch. 253, L. 1974; R.C.M. 1947, 46-2313.

Cross-References

One director to serve on County Planning Board, 76-1-211.

76-16-302. Membership in district. (1) Membership in the district is limited to persons engaged in the livestock business who own or lease forage-producing lands within or near the district, except that the agent of a person entitled to membership in the district may become a member in place of his principal.

(2) If an agent becomes a member, his qualifications for membership and his obligations to and the privileges in the district shall be measured by those his principal would have had if he had elected to become a member. An agent and his principal may not both be members of the district unless the agent has individual qualifications for membership which are separable from and independent of those of his principal.

(3) All members who possessed preferential grazing permits during the preceding grazing season or who possess such a permit at the time of voting shall be designated as permittee members.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part).

76-16-303. Voting rights. Permittee members only are entitled to vote on all issues submitted to a vote of the members. A permittee member has only one vote. Voting by proxy may not be permitted.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part).

76-16-304. Effect of transfer of land. When a member disposes of a part of the lands or leases owned by him so that another person becomes the owner of the lands or leases and acquires the right to membership, then the rights and interest involved shall be determined by the directors of the state district with the approval of the department.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(2).

76-16-305. Acquisition and disposal of property. A state district may:

(1) purchase or market livestock and livestock products and purchase supplies and equipment. These supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.

(2) acquire forage-producing lands, including agricultural lands when necessary to comply with the purposes and directives of this chapter, by lease, purchase, cooperative agreements, or otherwise, either from the United States, the state of Montana, or the county or counties in which the lands are located or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale, or otherwise;

(3) acquire or construct fences, reservoirs, or other facilities for the care of livestock and lease or purchase lands for such purposes.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(1), (3), (5).

76-16-306. Management of grazing lands. A state district may:

(1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range and may be

subject to reservations, regulations, and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers and decrease or increase the size of permits if the range carrying capacity changes.

(2) undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandoned farm lands and enter into cooperative agreements with the federal government or any other person for the reseeding or conservation and improvement practices;

(3) employ and discharge employees, riders, and other persons necessary to properly manage the state district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(4), (8), (13); amd. Sec. 23, Ch. 266, L. 1979.

Cross-References

County weed control, Title 7, ch. 22, part 21.

Weed control — Department of Agriculture, Title 80, ch. 7, part 7.

Noxious weed management funding, Title 80, ch. 7, part 8.

76-16-307. Requirement to lease available state lands. State land situated within the boundaries of a grazing district created under this chapter, not otherwise disposed of by the department of state lands, must be leased by the grazing district at a reasonable rental when offered for lease to the officers of the grazing district by that department. However, the officers of the grazing district may appear or submit evidence in writing before the department of state lands and show reason and cause for a change in the rental. If there is cause, the department of state lands may reappraise the land in question. The department of natural resources and conservation shall require that all state districts comply with this section.

History: En. Sec. 16, Ch. 208, L. 1939; amd. Sec. 46, Ch. 253, L. 1974; R.C.M. 1947, 46-2316.

Cross-References

Lease of state grazing lands, 77-6-502, 77-6-504 through 77-6-508.

76-16-308. Regulation of stock grazing in district. A state district may:

(1) specify the breed, quality, and number of male breeding animals which each member must furnish when stock is grazing in common in the state district;

(2) regulate the driving of stock over, across, into, or through the range and collect fees therefor;

(3) impose sanitary provisions, regulations, and practices.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(7), (12).

76-16-309. Knowledge of district boundaries responsibility of livestock owner. A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the district.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part).

76-16-310. Permit required to run livestock in district. (1) No owner or person in control of livestock shall permit the same to run at large or under herd within the exterior boundaries of any state district unless the owner or person in control of such livestock shall first obtain a grazing permit for same from such state district.

(2) The owner or person in control of such livestock running at large or under herd within a state district without a permit from the district or in excess of such permit shall be liable for all damages sustained thereby by any member, permittee, or state district. If any such livestock wrongfully enters upon premises within such district, the owner or person in control of such trespassing livestock, who willfully or negligently permits same to run at large within the district without first obtaining a permit therefor from the district, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not less than $10 or more than $500 and, in addition to said punishment, shall be liable for all damages sustained thereby to the party entitled thereto.

(3) This provision shall not require any person to obtain a grazing permit to graze livestock upon land owned or controlled by him within such state district if the stock so grazed is restrained from running at large within such state district and from grazing upon any other lands within the state district.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(1).

76-16-311. Control of trespassing livestock. (1) The state district or its duly authorized agent controlling the land upon which such wrongful entry is made by trespassing livestock may take into its possession such livestock and shall reasonably care for same while in its possession and may retain possession of said livestock and have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said livestock while in its possession.

(2) The state district taking up such livestock shall, within 72 hours after taking possession thereof, notify said owner, owners, or person in charge thereof by a notice in writing describing said livestock by number of animals and brands thereon, if any, the amount of damages claimed to date, and the charge per animal unit per day for caring for and feeding the same thereafter, such charges not to exceed 50 cents per animal unit per day, and describing by general description the location of the premises upon which said livestock is held and requiring such owner or owners, within 10 days after receiving said notice, to take said livestock away after making full payment of all damages and costs of said livestock.

(3) In case the parties do not agree as to the amount of damages, the state district taking up such livestock may at the expense of the owner retain a sufficient amount of such livestock to cover the amount of damages claimed by the state district. However, the owner may, upon furnishing a good and sufficient bond, conditioned for the payment to the state district of all sums, including costs that may be recovered by said state district in a civil action to foreclose its lien, have returned to him all livestock held as aforesaid, and said state district shall be liable to such owner for any loss or injury to said livestock accruing through the state district's lack of reasonable care.

(4) If the state district taking up livestock shall fail to recover in a civil action a sum equal to that offered to the state district by the owner of the livestock, the former shall bear the expense of keeping and feeding same while

in its possession. Such notice may be given by personal service on the said owner, owners, or person in charge thereof, by leaving said notice at his usual place of residence with some member of his family over the age of 14 years, or by sending said notice by prepaid registered or certified mail, addressed to his last known place of residence. Said service by registered or certified mail shall be deemed complete upon the deposit of said notice in the post office.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(2), (3).

Cross-References

Application to trespass actions, 76-16-415.

76-16-312. Impoundment of trespassing livestock. The state district or the party taking up such trespassing livestock may cause same to be impounded at any suitable place within the state district or within 5 miles from the exterior boundaries thereof, and such livestock shall be deemed legally impounded if placed in a corral or upon land enclosed by a legal fence or placed in charge of a herder or herders.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(9).

76-16-313. Release of livestock. Upon demand, the state district or its authorized agent controlling the land or party in charge of such livestock shall release and deliver possession of such livestock to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or persons in control of such livestock, as hereinbefore provided.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-314. Recovery of excess charge for damages. If the amount of damages or costs demanded by the party taking up such livestock is in excess of the actual damage and actual costs, the owner or person in charge of such livestock may pay same under protest and thereafter sue to recover the amount paid in excess of the actual damages and reasonable costs, provided suit to recover same is filed in the district court within 60 days after payment.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-315. Procedure upon inability to locate person responsible for trespassing livestock. The state district taking up such livestock (if, after due diligence to discover the owner or possessor of such livestock, such owner or possessor cannot be found or the ownership of such livestock discovered) or the party taking up such livestock (if said owner or claimant shall refuse to pay the amount of damages or charges or furnish bonds therefor, as herein provided) shall, within 10 days from the time that said livestock was taken up, deliver to the sheriff or a constable of the county in which the livestock was taken up a statement containing the information required to be given in the notice, hereinbefore set out, and in addition thereto, he shall mail, by prepaid registered or certified mail, a copy of said statement addressed to the nearest state livestock inspector.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-316. Sale of trespassing livestock. (1) Upon receipt of the statement referred to in 76-16-315, the sheriff or constable shall proceed to advertise and sell at public auction the livestock so taken up.

(2) Such livestock shall be sold on 5 days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three public places in such county, one of which shall be within the district. Such sheriff may require from the state district a good and sufficient bond, conditioned that the state district has used reasonable diligence to discover the owner of such stock and to notify him in the premises and that all requirements of law on the part of the state district to be performed in the premises have been performed and indemnifying the sheriff against all liability for the sale of said livestock except as to his own failure to perform the things required of him by law.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-317. Disposition of sale proceeds. (1) The proceeds of the sale shall be applied by the sheriff, after first deducting his costs and expenses, to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs of the party taking up such livestock, and the remainder, if any, may be paid over to the owner of such livestock, if known, and if the owner is not known, then such remainder shall be deposited with the county treasurer, who shall keep the same in a public fund to be designated state grazing district fund (giving the name of the district). A separate fund, styled as above, shall be kept by the county treasurer for each of said districts within his county. The county treasurer shall make a record of the number and type of animals sold and the brands on same, if any, the amount received for same, and the amount of deductions. The record shall be open to public inspection.

(2) Any person making claim of ownership of such livestock to the board of county commissioners at any time within 1 year from date of sale and submitting proof of ownership to such board with such claim to the satisfaction of such board shall be entitled to receive such excess received from the sale of such livestock.

(3) Any money received from the sale of any such livestock which shall not be so claimed within 1 year after such sale shall be transferred to the general fund of the county at the expiration of said period.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(7).

76-16-318. Unlawful recovery of trespassing livestock. Any person taking or rescuing from the possession of a state grazing district or an agent thereof any animal taken up and impounded pursuant to 76-16-310 through 76-16-317 shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not exceeding $200.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(10).

76-16-319. No liability for official acts. No officer, board, or employee of such officer or board or employee of any county or of any state district shall be liable for any act performed in good faith in discharging official duties under this chapter. All such acts shall be presumed to have been in good faith and in conformity with this chapter.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(8).

76-16-320. Maintenance of fences. (1) Regarding fences within the external boundaries of state districts, the cost of construction and maintenance of fence enclosing lands controlled by any member, nonmember, or state district within the external boundaries of such state district shall be borne by such member, nonmember, or state district, unless otherwise provided for in the duly approved bylaws of such state district.

(2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by such cost of construction and maintenance of fence, the state district's proportionate share of such costs and maintenance shall be financed only by assessments levied by the state district against the permittee members of the district upon consent thereto by 55% of such permittee members.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(11), (12).

76-16-321. Construction of trespass and fence provisions. (1) Sections 76-16-310 through 76-16-320 shall not be interpreted to repeal or abolish any other legal remedies which a member, a permittee, or a state district may now have against trespassing livestock or the owner or persons in control thereof. The remedies provided by 76-16-310 through 76-16-320 are additional and supplemental to the remedies provided by any other laws of the state of Montana.

(2) Nothing contained in 76-16-310 through 76-16-320 shall be so construed as to restrict the right of parties to obtain injunctive relief from a court of competent jurisdiction.

History: (1)En. Sec. 8, Ch. 199, L. 1945; Sec. 46-2327, R.C.M. 1947; (2)En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; Sec. 46-2326, R.C.M. 1947; R.C.M. 1947, 46-2326(13), 46-2327.

76-16-322. Fence-out requirement. Farming lands lying within the external boundaries of a state district shall be protected by the owner or lessee to the extent of a legal fence as described in 81-4-101(1). The state district or its members shall not be liable for damages unless such farming lands are protected by a sufficient fence as described in this section.

History: En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part).

76-16-323. District finances. A state district may:

(1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on an animal unit basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;

(2) set up and maintain a reasonable reserve fund;

(3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the

borrowing and the borrowing has been approved by the department. This subsection does not confer power upon a state district to mortgage the property of the individual members of the district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(6), (9), (10).

76-16-324. Lawsuits involving district. A state district may sue or be sued in its corporate name.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(2).

76-16-325. Compliance with department orders required. (1) If a state district or the directors of a state district fail to comply with an order of the department, the board may order a hearing thereon within the district or county and cite the directors of the district to appear before the board.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as herein defined and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the department, the directors may be summarily removed by the board from office, and thereupon the district shall elect new officers. During the period until the election, the department may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district shall be paid by the noncomplying state district before it may be reinstated.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part).

Part 4

Grazing Permit System

76-16-401. Distribution of grazing preferences. When a state district is organized, grazing preferences shall be distributed in the following manner:

(1) Any member of a state district owning or controlling dependent commensurate property as heretofore defined may be given a grazing preference.

(2) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the preference.

(3) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, preferring those that have used the range for any 3 years or any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, preferring those that have used the range 5 years immediately preceding the organization of such districts.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-402. Conversion of temporary permittee lands to dependent commensurate property. (1) When such temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by such permittee within or near the district for a period of any combination of 4 years out of 5, then the forage-producing lands owned or controlled by such permittee may be considered dependent commensurate property and, upon application, the district may accordingly grant such permittee membership and preference in the district providing an application had been made for temporary rights for each of the 5 years.

(2) However, such temporary permits shall at all times be merely privileges granted from year to year, and their possession shall in no event establish a preference right unless such preference right be expressly granted by the district and in the manner herein provided.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-403. Procedure if reduction in grazing privileges necessary. If reductions in grazing privileges become necessary, operators with temporary permits will be reduced first on a proportionate basis. When the extent of reduction of privileges exceeds that of temporary permits, then the rights of operators with both dependent commensurate property and commensurate property shall be reduced together on a proportionate basis.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-404. Application for grazing preferences. Any person entitled to grazing preferences within any state grazing district based on dependent commensurate property or commensurate property must make application within 1 year after said district shall have been organized to qualify for said preference; provided, however, all permittees shall be entitled to benefits accruing under 76-16-401 through 76-16-403.

History: En. Sec. 21, Ch. 208, L. 1939; amd. Sec. 6, Ch. 199, L. 1945; R.C.M. 1947, 46-2321(part).

76-16-405. Grazing preferences appurtenant to dependent commensurate property and commensurate property. Grazing preferences run with and are appurtenant to the dependent commensurate and commensurate property upon which they are based except as provided in this chapter. They are not subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process or transaction, except as provided in this section, 76-16-406 through 76-16-409, 76-16-412, and 76-16-413 or in the bylaws of a state district.

History: Ap. p. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; Sec. 46-2322, R.C.M. 1947; Ap. p. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945, amd. Sec. 37, Ch. 253, L. 1974; Sec. 46-2302, R.C.M. 1947; R.C.M. 1947, 46-2302(part), 46-2322(part).

76-16-406. Transfer of preferences. (1) Upon application by a permittee, the state district with the approval of the department may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability; however, in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.

(2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners of the dependent commensurate or commensurate property from which the transfer is to be made and the owner or owners of any encumbrances on the property. A transfer is not effective until approved by the department.

(3) All expenses involved under the application shall be borne by the applicant.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 24, Ch. 266, L. 1979.

76-16-407. Processing of application for transfer. (1) When an application for transfer is presented to the board of directors of a state district, the secretary upon the direction of that board shall give notice thereof, setting forth in general the application and the time and place of a hearing thereon as fixed by the board. A copy of the notice shall be given or mailed to the applicant and shall be published at least once a week for 2 successive weeks prior to the hearing in a newspaper published or generally circulated within the district, and the notice shall also be posted for at least 2 full weeks prior to the hearing in three public places within the district.

(2) The date of hearing must be at least 15 days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections thereto.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(2).

76-16-408. Effect of transfer of preference. Upon the allowance of a transfer under 76-16-405 through 76-16-407, the property from which the transfer is made loses its grazing preference to the extent of the preference transferred.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(3).

76-16-409. Transfer of underlying property. (1) When the land to which a preference is attached changes its control or ownership, the preference changes with the land and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees.

(2) If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the preferences may be revoked by the state district.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

76-16-410. Compensation to district for range improvements. Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner upon lands leased by the state district. The value shall be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it shall be fixed by the department.

History: En. Sec. 23, Ch. 208, L. 1939; amd. Sec. 50, Ch. 253, L. 1974; R.C.M. 1947, 46-2323.

76-16-411. Grazing permits to owners of land not controlled by district. (1) When any land is situated within the boundaries of a state district and is not leased or controlled by said district and not surrounded by a legal fence, any person owning or controlling such lands shall have the right to obtain a grazing permit from the state district, the size of which shall be determined by the carrying capacity of such land, full consideration being given for location of necessary stock water. The use of such permit shall be subject to all regulations by the state district.

(2) If the person owning or controlling such land declines to secure such permit or fails to lease such land to the state district at a fair lease rental and fails to fence such land at his own expense, he shall not be entitled to recover damages for trespass by stock grazing under permit, but the state district shall not issue a permit to use the carrying capacity of such land.

History: En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part).

76-16-412. Revocation of preferences upon failure to obtain permits, pay fees, or obey rules. (1) If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by registered or certified mail that the preference attached to the land will be revoked unless the owner pays the usual grazing fees to the state district within 60 days from the time of receipt of the notice. The state district may revoke the preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(2) If a permittee fails to pay grazing fees or assessments levied by the state district or fails to obtain a nonuse permit or violates any of the rules of the state district, the state district may notify the permittee and owner of the land by registered or certified mail that the preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules laid down by the district within 60 days from the time of receipt of the notice. The state district may revoke the preference if the permittee or owner fails to pay the charges or comply.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

76-16-413. Effect of revocation. (1) When a preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant and it immediately shifts to the state district.

(2) The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(7).

76-16-414. Equalization of district assets. (1) Whenever a state district shall possess reserves, the values of which are greater than its liabilities, and the state district shall determine that a part of such reserves is in excess of its reasonable needs to operate the district, such state district may refund to the permittee members their proportionate share of such reserves as determined at the last annual accounting.

(2) Whenever a state district shall possess reserves and physical assets, the values of which are greater than its liabilities, and a permittee member shall lose his grazing preference, he shall be entitled to receive his proportionate share of the value of such excess from the state district, as determined by the annual accounting of the state district. The state district may set off the amount of any claim it may have against such former member.

(3) Whenever a new member shall receive a grazing preference, he shall, as a condition of receiving such preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund which accrues to him by virtue of such membership. Such value shall be determined at the time of receiving such preference and upon the basis of the determination of value of such physical assets and reserves made at the last annual accounting.

History: **En. Sec. 24, Ch. 208, L. 1939; amd. Sec. 5, Ch. 163, L. 1953; R.C.M. 1947, 46-2324.**

76-16-415. Application to trespass actions. Sections 76-16-405 through 76-16-409, 76-16-412, and 76-16-413 do not apply to trespass violations.

History: **En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).**

Cross-References

Control of trespassing livestock, 76-16-311.

CHAPTERS 17 THROUGH 20

RESERVED

CHAPTER 21

YOUTH CONSERVATION CORPS

(Terminated. Sec. 14, Ch. 652, L. 1983)

Chapter Compiler's Comments

Histories of Terminated Sections:

76-21-101. En. Sec. 1, Ch. 652, L. 1983.
76-21-102. En. Sec. 2, Ch. 652, L. 1983.
76-21-103. En. Sec. 3, Ch. 652, L. 1983.
76-21-201. En. Sec. 4, Ch. 652, L. 1983.
76-21-202 through 76-21-204 reserved.
76-21-205. En. Sec. 7, Ch. 652, L. 1983.
76-21-206. En. Sec. 8, Ch. 652, L. 1983.
76-21-207. En. Sec. 9, Ch. 652, L. 1983.
76-21-301. En. Sec. 10, Ch. 652, L. 1983.
76-21-302. En. Sec. 5, Ch. 652, L. 1983.
76-21-303. En. Sec. 6, Ch. 652, L. 1983.

TITLE 77

STATE LANDS

Ch.
1. Administration of State Lands.
2. Transfers and Reservations of Property Interests.
3. Rock, Mineral, Coal, Oil, and Gas Resources.
4. Geothermal and Hydroelectric Resources.
5. Timber Resources.
6. Agricultural, Grazing, and Other Surface Leases.

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Part Cross-References

State lands — Public School Fund, Art. X, sec. 2, Mont. Const.

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

Income from state lands — Public School Fund, Art. X, sec. 5, Mont. Const.

State university funds from state lands, Art. X, sec. 10, Mont. Const.

Public land trust — disposition, Art. X, sec. 11, Mont. Const.

Income from sale of centennial acre, Title 2, ch. 89, part 2.

Income from land not held in trust — credit to general fund, 77-3-436.

77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(4) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(5) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands. General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(6) "Legally accessible state lands" means state lands that can be accessed by dedicated public road, right-of-way, or easement; by public waters; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public other than those granted permission.

(7) "State land" or "lands" means lands granted to the state by the United States for any purpose, either directly or through exchange for other lands; lands deeded or devised to the state from any person; and lands that are the property of the state through the operation of law. The term does not include lands the state conveys through the issuance of patent; lands used for building sites, campus grounds, or experimental purposes by any state institution that are the property of that institution; or lands acquired through foreclosure of any investments purchased under the provisions of 17-6-211.

History: En. Sec. 2, Ch. 60, L. 1927; re-en. Sec. 1805.2, R.C.M. 1935; amd. Sec. 7, Ch. 184, L. 1961; amd. Sec. 2, Ch. 428, L. 1973; amd. Sec. 2, Ch. 203, L. 1977; R.C.M. 1947, 81-102; amd. Sec. 10, Ch. 467, L. 1987; amd. Sec. 2, Ch. 609, L. 1991.

Cross-References

Lands in Public School Fund, Art. X, sec. 2, Mont. Const.

Public land trust, Art. X, sec. 11, Mont. Const.

Lands granted to state by United States, The Enabling Act (see anno. vol. 1, Federal Materials): §4 (title to; jurisdiction over); §10 (school support); §11 (sale and lease of); §12 (in aid of public buildings); § 14 (selection of; for universities); §15 (for Deer Lodge prison); § 16 (agricultural college); §17 (in aid of public buildings); §19 (manner of selection).

Capitol building lands, 18-2-107.

Property of state — what included, 70-1-202.

Acceptance of federal land by Board of Land Commissioners, 77-1-211.

77-1-102. Ownership of certain islands and abandoned riverbeds. All lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of such stream or lake as the same are shown by the United States survey thereof and all islands existing in the navigable streams or lakes in this state which have not been surveyed by the government of the United States and all lands which at any time in the past comprised such an island or any part thereof, except such lands as are occupied by and belong to the adjacent landowners as accretions, belong to the state of Montana to be held in trust for the benefit of the public schools of the state.

History: En. Sec. 1, Ch. 36, L. 1937; R.C.M. 1947, 81-2301.

Cross-References

Ownership of land bounded by water, 70-16-201.

Islands and accretion, Title 70, ch. 18, part 2.

Navigable waters, 85-1-112.

77-1-103. Administration of lands. The board shall lease or sell lands under 77-1-102 in the same manner as other school lands of the state are leased and sold. The board may sell or lease these lands without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104. The proceeds from the leasing and sale of such lands shall be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.

History: En. Sec. 2, Ch. 36, L. 1937; amd. Sec. 104, Ch. 428, L. 1973; R.C.M. 1947, 81-2302.

Cross-References

Disposition of proceeds from sale, 77-2-337.

Disposition of proceeds from lease, 77-3-106 (mining leases); 77-3-206 (nonmetallic minerals); 77-3-318 (coal); 77-3-436 (oil); 77-4-127 (geothermal).

77-1-104. Survey of lands. If the board considers it necessary that any of the lands mentioned in 77-1-102 be surveyed, it shall have the lands surveyed by the county surveyor of the county in which the lands are located. If there is no county surveyor, if the county surveyor is unable to make the survey, or if the best interests of the state require, the board shall appoint a qualified surveyor to make the surveys. The county surveyor or other surveyor appointed shall make an actual survey thereof establishing four corners of every quarter section and connecting the same with a United States survey and within 30 days after such survey file with the county clerk and recorder of that county a copy under oath of his field notes and plat and a duly certified copy of his field notes and plat with the department. For the services required in connection with the survey, the county surveyor or other surveyor appointed is entitled to fees as prescribed in 7-4-2821. Such fees shall be paid in the same manner as other expenses of the department.

History: En. Sec. 3, Ch. 36, L. 1937; amd. Sec. 105, Ch. 428, L. 1973; R.C.M. 1947, 81-2303.

Cross-References

County Surveyor, Title 7, ch. 4, part 28.

Engineers and land surveyors, Title 37, ch. 67.

77-1-105. Determining title. The board may take all proper proceedings for the purpose of determining the title to the beds of lakes and other bodies of water and of streams within the state and to that end may bring or defend suits or other proceedings in court or before other proper tribunals.

History: En. Sec. 14, Ch. 148, L. 1937; Sec. 81-614, R.C.M. 1947; redes. 81-2305 and amd. by Sec. 46, Ch. 428, L. 1973; R.C.M. 1947, 81-2305.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Suits affecting title — Governor may require Attorney General to appear, 2-15-201.

Limitations on actions concerning real property — state, Title 70, ch. 19, part 3.

Quieting title to real property, Title 70, ch. 28.

77-1-106. Setting of rates or fees — rules. (1) In setting the lease rental rates or fees for the use of state lands and cabin sites, the board shall consider the impact of the uses on the school trust asset, lessee expenses for management, water development, weed control, fire control, the term of the lease, the production capabilities, the conditions on the lease payment, and any other required expenses reasonably borne by the lessee. In setting cabin site lease rates, the board shall consider expenses that are commonly incurred by the lessees to preserve the value of the state land or to provide services commonly provided by private lessors in the area.

(2) All lease rental rates and fees established by the board under 77-1-208, 77-1-802, 77-6-202, 77-6-501, 77-6-502, and 77-6-507 must consider the trust asset and be in the best interests of the state with regard to the long-term productivity of the school trust lands, while optimizing the return to the school trust.

(3) The board shall comply with Title 2, chapter 4, part 3, in setting rental rates and license fees pursuant to 77-1-208, 77-1-802, 77-6-202, 77-6-501, 77-6-502, and 77-6-507.

History: (1), (2)En. Sec. 13, Ch. 586, L. 1993; (3)En. Sec. 10, Ch. 586, L. 1993.

Compiler's Comments

Effective Date: Section 18, Ch. 586, L. 1993, provided: "[This act] is effective July 1, 1993."

77-1-107 through 77-1-110 reserved.

77-1-111. Court actions. (1) All actions for the recovery of money due under this title or for the cancellation of leases or for the cancellation of certificates of purchase or patents or for the recovery of state lands, actions of forcible entry and detainer, actions for ejectment, and all other actions affecting any state lands shall be controlled, as to venue, by the provisions of the rules of civil procedure relating to the place of trial of civil actions and shall be conducted by the attorney general.

(2) When so requested by the attorney general, the county attorney of each county in the state shall represent the state in all foreclosure proceedings,

collections of delinquent rentals, actions for trespass on state lands, and in all other state land matters that may arise in his county. The county attorney shall not be entitled to charge the state any compensation for such services beyond his regular salary.

History: (1)En. Sec. 100, Ch. 147, L. 1909; re-en. Sec. 1921, R.C.M. 1921; re-en. Sec. 1921, R.C.M. 1935; Sec. 79-1503, R.C.M. 1947; (2)En. Sec. 112, Ch. 60, L. 1927; re-en. Sec. 1805.112, R.C.M. 1935; Sec. 81-1015, R.C.M. 1947; R.C.M. 1947, 79-1503, 81-1015.

Cross-References

Suits affecting title — Governor may require Attorney General to appear, 2-15-201.

Duties of Attorney General, 2-15-501.

Duties of County Attorney to state, 7-4-2716, 7-4-2717.

Venue, real property actions, 25-2-123.

Action for recovery of real property, 70-19-102.

Provisions relating to state in real property actions, Title 70, ch. 19, part 3.

Forcible entry and detainer, Title 70, ch. 27.

Procedure for default in land purchases from state, 77-2-332.

State land patents — generally, 77-2-341 through 77-2-345.

77-1-112. Violations classified. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing or not performing an official act under the provisions of this title or for modifying the performance thereof is guilty of a felony and punishable as provided in 77-1-115.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or of any land offered the state for sale or offered as security for a loan from the state or who falsely classifies or scales any timber on state lands or from state lands or any timber in which the state is interested or who knowingly and willfully makes any false report of any such classification or appraisal or scaling is guilty of a felony and punishable as provided in 77-1-115.

(3) (a) Any officer, employee, or representative of the state who otherwise violates any of the provisions of this title:

(i) is guilty of a felony if the violation results in a loss to the state of $1,000 or more; or

(ii) is guilty of a misdemeanor if the violation results in a loss to the state of less than $1,000 or in no pecuniary loss.

(b) The punishment shall be as provided in 77-1-115.

History: (1), (2)En. Sec. 118, Ch. 60, L. 1927; re-en. Sec. 1805.118, R.C.M. 1935; Sec. 81-1111, R.C.M. 1947; (3)En. Sec. 106, Ch. 147, L. 1909; re-en. Sec. 1927, R.C.M. 1921; re-en. Sec. 1927, R.C.M. 1935; Sec. 79-1504, R.C.M. 1947; R.C.M. 1947, 79-1504, 81-1111; amd. Sec. 1, Ch. 15, L. 1979.

Cross-References

Public employee standards of conduct, Title 2, ch. 2.

Bribery, 45-7-101.

Official misconduct, 45-7-401.

77-1-113. Restrictions on who may buy or lease state lands. It is unlawful for any member of the board, any person appraising lands or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber thereon, or any person connected with the department of state lands as an officer or employee to purchase or lease, directly or indirectly, any of the land of the state or any timber thereon.

History: En. Sec. 117, Ch. 60, L. 1927; re-en. Sec. 1805.117, R.C.M. 1935; amd. Sec. 75, Ch. 428, L. 1973; R.C.M. 1947, 81-1110; amd. Sec. 2, Ch. 15, L. 1979.

Cross-References

Public officers not to have interest in contracts, 2-2-201.

Ownership of centennial acre, Title 2, ch. 89, part 2.

77-1-114. Prosecutions. (1) Whenever an arrest shall be made for any violation of the provisions of this title or whenever any information of such violations shall be lodged with him, the county attorney of the county in which this act was committed must prosecute the offender or offenders if in his judgment the facts warrant the same.

(2) If any county attorney shall fail to comply with the provisions of this section, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 or more than $1,000. Upon his conviction, the district court wherein he is convicted shall forthwith declare his office vacant and notify the proper appointing power thereof. Actions against the county attorney shall be brought by the attorney general in the name of the state.

(3) The penalties of this section shall also apply to any magistrate with proper authority who refuses or neglects to cause the arrest and prosecution of any person when a complaint under oath of a violation of any of the provisions of this title has been lodged with him.

History: En. Sec. 17, Ch. 147, L. 1909; re-en. Sec. 1839, R.C.M. 1921; re-en. Sec. 1839, R.C.M. 1935; R.C.M. 1947, 81-1416; amd. Sec. 3, Ch. 15, L. 1979.

Cross-References

Forfeiture of office — criminal conviction, 2-16-501, 45-7-401.

Vacancies in office, 7-4-2206.

Duties of County Attorney to state, 7-4-2716.

Official misconduct, 45-7-401.

77-1-115. Punishments. (1) Any officer, employee, or representative of the state who is found guilty of a felony as defined in 77-1-112 is punishable by imprisonment in the state penitentiary for not less than 1 or more than 10 years or by a fine which shall neither be less than $500 nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted or by both such imprisonment and fine.

(2) Any officer, employee, or representative of the state who is found guilty of a misdemeanor as defined in 77-1-112 is punishable by imprisonment in a county jail not to exceed 1 year or by a fine which shall neither be less than $100 nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted or by both such imprisonment and fine.

History: En. Sec. 119, Ch. 60, L. 1927; re-en. Sec. 1805.119, R.C.M. 1935; R.C.M. 1947, 81-1112; amd. Sec. 4, Ch. 15, L. 1979.

Cross-References

Forfeiture of office — criminal conviction, 2-16-501, 45-7-401.

77-1-116. Additional penalty. In addition to the penalties provided for in this code against those committing trespass upon any of the lands owned or held in trust or otherwise by the state, the board is hereby authorized and empowered, without legal process, to seize and take or cause to be seized and taken any and all lumber, wood, grass, or other property unlawfully severed from the lands, whether the same has been removed from said lands or not, and may dispose of the same at either public or private sale in such manner as will be most conducive to the interests of the state, and all moneys arising therefrom, after deducting the reasonable and necessary expenses of such seizure and sale, shall be a part of the permanent fund to which such lands may belong.

History: En. Sec. 7, p. 49, L. 1893; re-en. Sec. 3566, Pol. C. 1895; re-en. Sec. 2219, Rev. C. 1907; amd. Sec. 59, Ch. 147, L. 1909; re-en. Sec. 1879, R.C.M. 1921; re-en. Sec. 1879, R.C.M. 1935; R.C.M. 1947, 81-1602.

Cross-References

Criminal trespass to land, 45-6-203.

Trespass for taking timber, 70-16-107, 70-16-108.

77-1-117. Disposition of fines. Unless otherwise provided, all money received as fines, fees, and forfeitures under this title or as penalties for the violation of any of the land laws of this state, except money received by a justice's court, shall be paid to the state treasurer and by him deposited to the credit of the general fund.

History: En. Sec. 104, Ch. 147, L. 1909; amd. Sec. 1, Ch. 99, L. 1917; amd. Sec. 1, Ch. 171, L. 1919; amd. Sec. 1, Ch. 103, L. 1921; re-en. Sec. 1919, R.C.M. 1921; re-en. Sec. 1919, R.C.M. 1935; R.C.M. 1947, 79-1502; amd. Sec. 5, Ch. 15, L. 1979; amd. Sec. 49, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

General Fund, 17-2-102.

77-1-118 and 77-1-119 reserved.

77-1-120. *(Temporary)* **State land board advisory council.** (1) There is a state land board advisory council. The council shall gather information, provide advice, make recommendations, and perform other activities as may be necessary in the setting of all fees or rental rates for state lands.

(2) The state land board advisory council must be appointed by the governor with the concurrence of the majority of the board of land commissioners. The advisory council must be broadly representative of the users and beneficiaries of the state trust lands.

(3) The state land board advisory council shall make recommendations for fees and rental rates to the state land board. *(Terminates March 1, 1996—sec. 17, Ch. 586, L. 1993.)*

History: En. Sec. 14, Ch. 586, L. 1993.

Compiler's Comments

Termination: Section 17, Ch. 586, L. 1993, provided: "[Section 14] [77-1-120] and . . . terminate March 1, 1996."

Effective Date: Section 18, Ch. 586, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 2

Board of Land Commissioners

77-1-201. Board — meetings and officers. (1) The board shall hold regular meetings at least once each month and may hold special meetings whenever considered necessary upon call of the president or a majority of the members.

(2) Three members of the board constitute a quorum for the transaction of business. The governor is the president of the board; in his absence the lieutenant governor shall preside and in his absence the superintendent of public instruction shall preside.

History: En. Sec. 4, Ch. 60, L. 1927; re-en. Sec. 1805.4, R.C.M. 1935; amd. Sec. 4, Ch. 428, L. 1973; R.C.M. 1947, 81-104.

Cross-References

Constitutional establishment and membership of Board, Art. X, sec. 4, Mont. Const.

Governor as member of Board, 2-15-201.

Secretary of State as member of Board, 2-15-401.

Attorney General as member of Board, 2-15-501.

77-1-202. Powers and duties of board. (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state. The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

(2) It is consistent with the powers and duties provided in subsection (1) that the people are entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of the recreation.

(3) When acquiring land for the state, the board shall determine the value thereof after an appraisal by a qualified land appraiser.

History: En. Sec. 3, Ch. 60, L. 1927; re-en. Sec. 1805.3, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973; R.C.M. 1947, 81-103(part); amd. Sec. 1, Ch. 136, L. 1983; amd. Sec. 3, Ch. 609, L. 1991.

Cross-References

Support of education, Art. X, sec. 2, 4, 5, 11, Mont. Const.

Authority granted — generally, Art. X, sec. 4, Mont. Const.

Disposition of public land trust, Art. X, sec. 11, Mont. Const.

Commissioner of State Lands to perform functions delegated by Board, 2-15-3202.

Investment authority of Board of Investments, Title 17, ch. 6, part 2.

"Interest and income" money to schools — deposit by Board, 20-9-341.

"Interest and income" money part of state equalization aid to schools, 20-9-343.

Board to prescribe rules for appraisal, 77-1-206.

Classification of state lands, 77-1-402.

Exchange or sale of state lands within Indian reservations, 77-2-201.

Commissioner of State Lands — limitation on overriding royalties and payments out of production allowed — state oil and gas leases, 77-3-444.

77-1-203. Multiple-use management. (1) The board shall manage state lands under the multiple-use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and

(b) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

(2) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values.

(3) State lands, including those lands that are leased primarily for other purposes, are open to general recreational use subject to legal access and to closures and restrictions pursuant to rules adopted under 77-1-804.

(4) The department shall include in all new or renewal leases and licenses a provision that leased lands may not be closed at any time to the public for general recreational purposes without advance written permission of the department.

History: (1)En. Sec. 3, Ch. 60, L. 1927; re-en. Sec. 1805.3, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973; Sec. 81-103, R.C.M. 1947; (2)En. Sec. 16, Ch. 60, L. 1927; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; Sec. 81-302, R.C.M. 1947; R.C.M. 1947, 81-103(part), 81-302(part); amd. Sec. 6, Ch. 15, L. 1979; amd. Sec. 4, Ch. 609, L. 1991.

Cross-References

Classification of state lands, 77-1-402.

77-1-204. Power to sell, lease, or exchange certain state lands. (1) The board is authorized to lease state lands for uses other than agriculture, grazing, timber harvest, or mineral production under such terms and conditions which best meet the duties of the board as specified in 77-1-202 and 77-1-203. The lease period for such leases, except for power and school site leases, may not be for longer than 40 years.

(2) The board shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of 77-1-214 when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks. Said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into.

History: (1)En. 81-103.1 by Sec. 1, Ch. 135, L. 1974; Sec. 81-103.1, R.C.M. 1947; (2)En. Sec. 5, Ch. 159, L. 1937; Sec. 81-1107, R.C.M. 1947; R.C.M. 1947, 81-103.1, 81-1107; amd. Sec. 1, Ch. 488, L. 1985; amd. Sec. 5, Ch. 609, L. 1991.

Cross-References

Authority to lease and exchange state lands, Art. X, sec. 4, Mont. Const.

77-1-205. Board to correct errors. The board shall correct errors, mistakes, and misdescriptions in deeds and conveyances of property to the state. Deeds or other conveyances shall be made and executed in the manner provided for the execution of patents by the state. The board may also correct errors in leases, certificates of purchase, patents, and other conveyances of property from the state upon satisfactory proof that an error or mistake has been made.

History: En. Sec. 115, Ch. 60, L. 1927; re-en. Sec. 1805.115, R.C.M. 1935; Sec. 81-1108, R.C.M. 1947; redes. 81-106 and amd. by Sec. 73, Ch. 428, L. 1973; R.C.M. 1947, 81-106.

Cross-References

Refunding of money paid by mistake, 77-1-303.

Execution of patents by state, 77-2-342.

77-1-206. Board to prescribe further rules for appraisal. The board shall prescribe such further rules for the appraisal of state lands as it may deem necessary, not inconsistent with the provisions of this title or the state constitution.

History: **En. Sec. 18, Ch. 60, L. 1927; re-en. Sec. 1805.18, R.C.M. 1935; R.C.M. 1947, 81-303.**

Cross-References

Adoption of rules governed by Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-207. Board to defend suits. For the purpose of determining the title to any property seized and taken under the provisions of 77-1-116, the board is hereby authorized and empowered to defend, in the name of the state, any and all actions that may be brought for that purpose and to do and perform all things necessary to protect the interests of the state.

History: **En. Sec. 8, p. 49, L. 1893; re-en. Sec. 3567, Pol. C. 1895; re-en. Sec. 2220, Rev. C. 1907; re-en. Sec. 60, Ch. 147, L. 1909; re-en. Sec. 1880, R.C.M. 1921; re-en. Sec. 1880, R.C.M. 1935; R.C.M. 1947, 81-1603.**

Cross-References

Actions affecting title to state property — Governor may require Attorney General to appear, 2-15-201.

77-1-208. Cabin site licenses and leases — method of establishing value. (1) The board shall[, taking into account recommendations of the state land board advisory council,] set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 2.

(2) The board shall set the fee of each initial cabin site license or lease or each current cabin site license or lease of a person who does not choose to retain the license or lease. The initial fee must be based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be determined under the method provided for in subsection (1).

(3) The board shall follow the procedures set forth in 77-6-302 through 77-6-306 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board. *(Bracketed language in subsection (1) terminates March 1, 1996—sec. 17, Ch. 586, L. 1993.)*

History: **En. Sec. 1, Ch. 459, L. 1983; amd. Sec. 1, Ch. 705, L. 1989; amd. Sec. 1, Ch. 586, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 586 in (1), in first sentence near beginning after "shall", inserted bracketed reference to Advisory Council, after "fee" inserted "based on the full market value", and after "site" deleted "subject to a license or lease in effect on January 1, 1988" and in second sentence, near beginning after "must", substituted "attain full market value based on" for "be 3.5% of the" and at end, after "revenue", deleted "or $150, whichever is greater"; deleted (4) that read: "(4) Nothing in this section may be construed as a delegation of rulemaking authority to the board"; and made minor changes in style. Amendment effective July 1, 1993.

Applicability: Section 16(1), Ch. 586, L. 1993, provided: "[Section 1] [77-1-208] applies to leases entered into or renewed on or after [the effective date of this act] [effective July 1, 1993] and, for leases in effect on [the effective date of this act] [effective July 1, 1993], to rentals due after rental adjustments made pursuant to adjustment provisions in the lease."

Cross-References

Legislative History Act, Title 5, ch. 4, part 4.

77-1-209. Leasing rules. The board may prescribe rules relating to the leasing of state lands as it considers necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they are granted to the state of Montana. The rules should prescribe a procedure for setting all fees and rental rates for the use of state lands for any purpose. The procedure should establish provisions for notice, public comment, public hearings, and appeal.

History: En. Sec. 37, Ch. 60, L. 1927; re-en. Sec. 1805.37, R.C.M. 1935; amd. Sec. 24, Ch. 428, L. 1973; R.C.M. 1947, 81-423; MCA 1981, 77-6-104; redes. 77-1-209 by Code Commissioner, 1983; amd. Sec. 11, Ch. 586, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 586 inserted second sentence concerning procedure for setting fees and rental rates and inserted third sentence concerning content of procedure. Amendment effective July 1, 1993.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-210 reserved.

77-1-211. Acceptance of federal land grants. (1) The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, except as provided in subsection (2).

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures.

(3) Notwithstanding any provisions of this title, the board, after consultation with the director of the department of health and environmental sciences, may accept any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq. Legislative approval is not required for such acceptance.

History: En. Sec. 113, Ch. 60, L. 1927; re-en. Sec. 1805.113, R.C.M. 1935; amd. Sec. 70, Ch. 428, L. 1973; R.C.M. 1947, 81-1101(part); amd. Sec. 1, Ch. 452, L. 1979; amd. Sec. 2, Ch. 274, L. 1989.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-212. Acceptance of federal facilities and installations — title in state. The board may, on behalf of the state, accept donations of federal installations, facilities, lands, or properties. All title to the installations or facilities shall be vested in the name of the state for its use. This section does not limit, reduce, or supersede Title 18, chapter 5, part 2.

History: En. Sec. 1, Ch. 252, L. 1965; amd. Sec. 71, Ch. 428, L. 1973; R.C.M. 1947, 81-1101.1.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-213. Acceptance of gifts, donations, grants, legacies, and devises to the state. (1) The board is hereby authorized and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies, and devises having a value of not less than $250 from each person. All lands passing to the state under these provisions or through the operation of law shall be managed as other state lands, and the rents and earnings shall be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations.

(2) All money realized from the sale of such lands and from other property and all gifts, donations, grants, legacies, and devises made in money or the equivalent of money shall be administered by the board for the benefit of the specific purposes designated by the person from whom they were received and as further regulated by this title. The provisions of this section shall apply to gifts, donations, grants, legacies, and devises already made to the state and now under the administration of the board if not contrary to any specific provisions made therein by the persons from whom they were received.

History: En. Sec. 114, Ch. 60, L. 1927; re-en. Sec. 1805.114, R.C.M. 1935; amd. Sec. 43, Ch. 100, L. 1973; R.C.M. 1947, 81-1102.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

Escheated real property, 72-14-206.

77-1-214. Donations of land for forestry purposes. The board may accept gifts, donations, or contributions of land suitable for forestry or park purposes and enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the board are desirable for state forests.

History: En. Sec. 1, Ch. 159, L. 1937; amd. Sec. 72, Ch. 428, L. 1973; R.C.M. 1947, 81-1103.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-215. Expenditures authorized. When lands are acquired or leased under 77-1-214, the board is hereby authorized to:

(1) make expenditures from any funds not otherwise obligated for the management, development, and utilization of such areas;

(2) sell or otherwise dispose of products from such lands; and

(3) make such rules as may be necessary to carry out the purposes of 77-1-214 through 77-1-217 and 77-1-204(2).

History: En. Sec. 2, Ch. 159, L. 1937; R.C.M. 1947, 81-1104.

Cross-References

Adoption of rules governed by Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-216. Disposition of revenues and profits. All revenues derived from lands acquired under the provisions of 77-1-214 shall be segregated by the state treasurer for the use of the board in the acquisition, management, development, and use of such lands until all obligations incurred have been paid in full. Thereafter, 50% of all net profits accruing from the administration of such lands shall be applicable for such purposes as the legislature may prescribe and 50% shall be paid into the school fund of the county in which lands are located.

History: En. Sec. 3, Ch. 159, L. 1937; R.C.M. 1947, 81-1105.

Cross-References

School funds from state lands, Art. X, sec. 2 through 5, 11, Mont. Const.

County schools equalization revenues, 20-9-331.

Interest and income money, 20-9-341 through 20-9-343.

77-1-217. Payment of certain obligations. Obligations for the acquisition of land incurred by the board under the authority of 77-1-214 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the state.

History: En. Sec. 4, Ch. 159, L. 1937; R.C.M. 1947, 81-1106.

77-1-218 through 77-1-220 reserved.

77-1-221. Acceptance of Power-Tobin mansion — designation — use. (1) The state of Montana accepts the bequest of the Power-Tobin mansion if sufficient private sector funding is obtained. The board of land commissioners shall manage the mansion for the state.

(2) The Power-Tobin mansion, located at 624 Dearborn Avenue, Helena, Montana, is the governor's centennial mansion. The mansion must be used for official ceremonial functions of the state and to provide suitable living quarters for the governor of the state.

History: En. Sec. 1, Ch. 691, L. 1989.

Cross-References

Maintenance of Governor's centennial mansion, 2-17-127.

77-1-222. Sale of executive mansion. The board of land commissioners may sell the executive mansion located at 2 Carson Street, Helena, Montana, upon completion of the Tobin mansion renovation project. The proceeds of the sale must be deposited in an account in the capital projects fund. The funds in the account, including the interest and income earned on the account, must be used for the ongoing renovation and maintenance of the Power-Tobin mansion.

History: En. Sec. 2, Ch. 691, L. 1989.

Part 3

Department of State Lands

Part Cross-References

Cooperative agreements with district weed boards, 7-22-2151.

Various forestry functions transferred from Board of Natural Resources and Conservation, 77-1-304, 77-2-213, 77-2-214, 77-5-104.

77-1-301. Powers and duties of the department. (1) Under the direction of the board, the department has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands. It shall perform such other duties the board directs, the purpose of the department demands, or the statutes require.

(2) It shall collect and receive all moneys payable to the state through its office as fees, rentals, royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from any other source. It shall issue a receipt for each cash payment or whenever requested by the payer.

History: En. Sec. 8, Ch. 60, L. 1927; re-en. Sec. 1805.8, R.C.M. 1935; amd. Sec. 2, Ch. 26, L. 1971; Sec. 81-204, R.C.M. 1947; redes. 81-105 and amd. by Sec. 5, Ch. 428, L. 1973; R.C.M. 1947, 81-105.

Cross-References

Head of Department is the Board of Land Commissioners, 2-15-3201.

Chief administrative officer of Department is Commissioner of State Lands, 2-15-3202.

Duty to identify, protect, and develop heritage properties and paleontological remains on state lands, 22-3-424.

Department to administer abandoned railroad right-of-way until needed for transportation, 60-11-111.

Transportation of coniferous trees — Department authority, 76-13-601.

77-1-302. Setting fees. The department may prescribe fees, with the approval of the board, for the issuance, filing, or making of a copy of any instrument or for any other service.

History: En. Sec. 120, Ch. 60, L. 1927; re-en. Sec. 1805.120, R.C.M. 1935; amd. Sec. 19, Ch. 121, L. 1965; amd. Sec. 11, Ch. 22, L. 1971; Sec. 81-1113, R.C.M. 1947; redes. 81-108 and amd. by Sec. 76, Ch. 428, L. 1973; R.C.M. 1947, 81-108.

77-1-303. Refunding of money paid by mistake. If any money is erroneously paid to the state on any permit, lease, certificate of purchase, patent, loan, or in any other transaction, the department shall refund that money to the person entitled to it from the proper fund.

History: En. Sec. 116, Ch. 60, L. 1927; re-en. Sec. 1805.116, R.C.M. 1935; Sec. 81-1109, R.C.M. 1947; redes. 81-107 and amd. by Sec. 74, Ch. 428, L. 1973; R.C.M. 1947, 81-107.

77-1-304. Selection and location of lands granted by United States. Under the general direction of the board and as rapidly as the appropriations for the work will permit, the department shall select and locate all lands granted to this state by the United States for any purpose and not located by the grant itself. It shall also select and locate lands in lieu of all those lands in sections 16 and 36 and in the other federal land grants which for any reason have been lost to the state. All selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for these lands for domestic use, livestock, and irrigation.

History: En. Sec. 15, Ch. 60, L. 1927; re-en. Sec. 1805.15, R.C.M. 1935; amd. Sec. 7, Ch. 428, L. 1973; R.C.M. 1947, 81-301; amd. Sec. 1, Ch. 286, L. 1985.

Cross-References

Appropriations, permits, and certificates of water rights, Title 85, ch. 2, part 3.

Part 4

Classification of State Lands

77-1-401. Classes of land. The state lands are classified as follows:

(1) Class 1—lands which are principally valuable for grazing purposes;

(2) Class 2—lands which are principally valuable for the timber that is on them or for the growing of timber or for watershed protection;

(3) Class 3—lands which are principally valuable for the production of crops;

(4) Class 4—lands which are principally valuable for uses other than grazing, crop production, timber production, or watershed protection.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(1).

Cross-References

Classification required, Art. X, sec. 11, Mont. Const.

77-1-402. Basis for classification or reclassification. (1) The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the board as specified in 77-1-202 and 77-1-203. When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification.

(2) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased, or used under a different classification from that to which it actually belongs.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part); amd. Sec. 6, Ch. 609, L. 1991.

77-1-403. Capability inventory. A capability inventory shall be made prior to changing the classification of state lands. Such inventory shall include, when appropriate to the classification, information on soils capability, vegetation, wildlife use, mineral characteristics, public use, aesthetic values, cultural values, surrounding land use, and any other resource, zoning, or planning information which is related to the classification.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part).

77-1-404. Records of state lands. All field books, plats, maps, and records of the department shall show the class to which each tract therein belongs and whether it belongs to the public schools of the state or to a state institution or other entity according to the grant or instrument by which title to the land has passed to the state. They shall also show whether or not the coal or other minerals in the land are reserved by the United States and shall contain any other information the department considers necessary.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(4).

Part 5

State Land Equalization Payments

77-1-501. List of state lands by county. The department shall, before the first Monday of April of every year, prepare and transmit a statement to the department of revenue or its agent in each county in which the state has real property in excess of 6% of the total land area of the county and from which the state derives grazing, agricultural, or forest income. The statement shall contain the total number of acres owned by the state in that county and list the acres separately as grazing, agricultural, or forest land.

History: En. Sec. 1, Ch. 235, L. 1967; amd. Sec. 54, Ch. 391, L. 1973; amd. Sec. 77, Ch. 428, L. 1973; R.C.M. 1947, 81-1115.

77-1-502. Computation of state land equalization payment. (1) The department of revenue shall compute the amount of taxes which would be payable on the county assessments of said property as if it were owned by and taxable to a taxpayer of such county.

(2) If the land is not classified, the sum to be listed shall be determined by the average tax payment made on like property within the county where said land is situated, not to exceed 12 cents per grazing acre, 35 cents per agricultural acre, and 12 cents per forest acre. The average tax may be derived from the most recent biennial report of the department of revenue. The total figure arrived at by this method shall be called the gross assessment figure.

(3) The county exemption factor shall be determined by dividing the percentage the state-owned land bears to the total land area of the county into 6%. This quotient shall be multiplied by the gross assessment figure, and the product is called the state exemption figure.

(4) The state exemption figure shall be subtracted from the gross assessment to give the state land equalization payment.

History: En. Sec. 2, Ch. 235, L. 1967; amd. Sec. 55, Ch. 391, L. 1973; R.C.M. 1947, 81-1116.

77-1-503. Form to be completed by county agent of the department of revenue. The department shall provide a form to be followed and completed by the agent of the department of revenue in each county. The agent shall, before October 1, make the computations required and submit to the department the completed form which shall show the computations and method used in arriving at the state land equalization payment.

History: En. Sec. 3, Ch. 235, L. 1967; amd. Sec. 56, Ch. 391, L. 1973; amd. Sec. 78, Ch. 428, L. 1973; R.C.M. 1947, 81-1117.

77-1-504. Processing of county statements. The department shall examine the statement returned by the agent of the department of revenue for accuracy, and in no case shall the state land equalization payment be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The department shall, before November 1 of each year, prepare and file a claim with the department of administration for all counties who are eligible for state land equalization payments, and this claim shall show the amount of money each eligible county will receive.

History: En. Sec. 4, Ch. 235, L. 1967; amd. Sec. 57, Ch. 391, L. 1973; amd. Sec. 79, Ch. 428, L. 1973; R.C.M. 1947, 81-1118.

77-1-505. Warrant for payments to counties. The department of administration shall, before December 1, approve and authorize the issuance of a warrant on the general fund of the state made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment.

History: En. Sec. 5, Ch. 235, L. 1967; amd. Sec. 80, Ch. 428, L. 1973; R.C.M. 1947, 81-1119.

77-1-506. County distribution. The county treasurer shall distribute the money received under this part within his county as hereinafter provided:

(1) Sixty percent of total payment shall be broken down into cents per acre of total state-owned land within the county and apportioned between the elementary school districts in accordance with the amount of state-owned land in each elementary district.

(2) Forty percent shall be allotted to the county road fund.

History: En. Sec. 6, Ch. 235, L. 1967; R.C.M. 1947, 81-1120.

Cross-References

County road funds, 7-14-2501.

County School Equalization Fund, 20-9-331.

77-1-507. School district use of proceeds. The money received by any school district under this part shall be designated as district money for the general maintenance and operation of the elementary schools of the district. Such money may be used by the district as all other cash balances are used in accordance with the provisions of 20-9-335.

History: En. Sec. 7, Ch. 235, L. 1967; amd. Sec. 81, Ch. 428, L. 1973; R.C.M. 1947, 81-1121.

77-1-508. Repealed. Sec. 1, Ch. 214, L. 1979.

History: En. Sec. 9, Ch. 60, L. 1927; re-en. Sec. 1805.9, R.C.M. 1935; Sec. 81-205, R.C.M. 1947; redes. 81-1122 and amd. by Sec. 6, Ch. 428, L. 1973; R.C.M. 1947, 81-1122.

Part 6

Development of State Lands

77-1-601. Statement of policy. It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system, and other institutions benefiting therefrom, and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.

History: En. Sec. 1, Ch. 295, L. 1967; R.C.M. 1947, 81-2401.

Cross-References

Board to direct and control state lands, Art. X, sec. 4, Mont. Const.

Department of Fish, Wildlife, and Parks management of centennial acre, Title 2, ch. 89, part 2.

Use of coal severance tax proceeds for development, operation, and maintenance of state parks, recreational areas, monuments, or historical sites, 15-35-108.

77-1-602. Definition of terms. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Account" means the resource development account in the state special revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenue required by law to be placed in the Montana nonexpendable trust fund type and revenue from the sale of timber.

History: En. Sec. 2, Ch. 295, L. 1967; amd. Sec. 106, Ch. 428, L. 1973; R.C.M. 1947, 81-2402; amd. Sec. 36, Ch. 281, L. 1983; amd. Sec. 5, Ch. 14, Sp. L. January 1992.

Compiler's Comments

Deletion of Termination Date: Section 9, Ch. 533, L. 1993, amended sec. 6, Ch. 14, Sp. L. January 1992, by removing the termination date for this section.

Cross-References

The Enabling Act, sec. 11.

Trust and agency fund types — state special revenue fund, 17-2-102.

School Trustees to hold property in trust, 20-6-602.

Interest and income money, 20-9-341.

Income from state lands:

land donated for forestry purposes, 77-1-216.

for granting an easement, 77-2-106.

sale of state land, 77-2-337.

prospecting permits, 77-3-106.

mining lease, 77-3-116.

nonmetallic minerals except coal, oil, and gas, 77-3-206.

coal, 77-3-318.

oil and gas — credited to general fund unless otherwise disposed of, 77-3-436.

underground storage of natural gas, 77-3-501.

geothermal resources, 77-4-127.

surface leases, Title 77, ch. 6, part 5.

77-1-603. Rules. The board shall adopt such rules as it considers necessary and proper for the purpose of carrying out the provisions of this part.

History: En. Sec. 8, Ch. 295, L. 1967; amd. Sec. 112, Ch. 428, L. 1973; R.C.M. 1947, 81-2408.

Cross-References

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-604. Resource development account. A resource development account in the state special revenue fund in the state treasury is created to be used solely for the purpose of investing in the improvement and development of state lands acquired by grant or foreclosure in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institutions, and objects for which the lands are held in trust. Appropriations from the account shall be expended for no other purposes.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part); amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Treasury fund structure — state special revenue fund, 17-2-102.

77-1-605. Types of developments. The developments contemplated may include those projects that will develop or conserve the various state land resources, including water, both surface and underground, grazing land, agricultural land, and timber land to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state which are suitable for development and other expenses or costs which in the judgment of the board are desirable or necessary in order to develop or increase the value of the land or the revenue therefrom.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part).

77-1-606. *(Temporary)* **Restriction on use of income from school and institutional lands.** Money in the resource development account created in 77-1-604 that is derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands must be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred must be reimbursed by a method approved by the board. *(Terminates June 30, 1995—sec. 12, Ch. 533, L. 1993.)*

77-1-606. *(Effective July 1, 1995)* **Restriction on use of income from school and institutional lands.** Moneys in the account derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands shall be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred shall be reimbursed by a method approved by the board.

History: En. Sec. 4, Ch. 295, L. 1967; amd. Sec. 1, Ch. 180, L. 1973; amd. Sec. 108, Ch. 428, L. 1973; R.C.M. 1947, 81-2404; amd. Sec. 2, Ch. 533, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 533 near beginning, before "account", inserted "resource development" and after "account" inserted "created in 77-1-604"; and made minor changes in style. Amendment effective June 30, 1993, and terminates June 30, 1995.

77-1-607. *(Temporary)* **Deductions from income for development account — maximum percentage.** (1) The board shall determine the amount or percentage of income, not to exceed 2 ½%, that is necessary to achieve the purposes of this part and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this part.

(2) The maximum percentage limitation in subsection (1) does not apply to income deducted and expended under the provisions of 77-1-613. *(Terminates June 30, 1995—sec. 12, Ch. 533, L. 1993.)*

77-1-607. *(Effective July 1, 1995)* **Deductions from income for development account — maximum percentage.** The board shall determine the amount or percentage of income, not to exceed 2 ½%, which is necessary to achieve the purposes of this part and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this part.

History: En. Sec. 5, Ch. 295, L. 1967; amd. Sec. 109, Ch. 428, L. 1973; R.C.M. 1947, 81-2405; amd. Sec. 3, Ch. 533, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 533 inserted (2) providing exception for income deducted and expended under 77-1-613; and made minor changes in style. Amendment effective June 30, 1993, and terminates June 30, 1995.

77-1-608. *(Temporary)* **Crediting of deductions.** All deductions from gross proceeds made in accordance with 77-1-607(1) must be paid into the account, and the balance of the proceeds must be paid into the state treasury to the credit of the proper account. *(Terminates June 30, 1995—sec. 12, Ch. 533, L. 1993.)*

77-1-608. *(Effective July 1, 1995)* **Crediting of deductions.** All deductions from gross proceeds made in accordance with 77-1-607 shall be paid into the account, and the balance of the proceeds shall be paid into the state treasury to the credit of the proper account.

History: En. Sec. 6, Ch. 295, L. 1967; amd. Sec. 110, Ch. 428, L. 1973; R.C.M. 1947, 81-2406; amd. Sec. 4, Ch. 533, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 533 after "77-1-607" inserted "(1)"; and made minor changes in style. Amendment effective June 30, 1993, and terminates June 30, 1995.

77-1-609. Investment of moneys in development account. The board of investments shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account.

History: En. Sec. 7, Ch. 295, L. 1967; amd. Sec. 111, Ch. 428, L. 1973; R.C.M. 1947, 81-2407.

Cross-References

Unified investment program, Title 17, ch. 6, part 2.

77-1-610 through 77-1-612 reserved.

77-1-613. *(Temporary)* **Deduction of portion of income received from sale of timber from state trust lands — creation of account.** (1) There is an account in the state special revenue fund. The amount of $312,000 per year of the income received from the sale of timber from state trust lands must be deducted and placed in the account to the credit of the state timber sale program for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts.

(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation and documentation.

(3) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

(4) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs.

(5) A timber purchaser who successfully bids on a contract to purchase timber from state trust lands shall deposit with the department 20% of the bid price as a downpayment when the contract is awarded. *(Terminates June 30, 1995—sec. 12, Ch. 533, L. 1993.)*

History: En. Sec. 1, Ch. 533, L. 1993.

Compiler's Comments

Effective Date: Section 11, Ch. 533, L. 1993, provided that this section is effective June 30, 1993.

Termination Date: Section 12, Ch. 533, L. 1993, provided that this section terminates June 30, 1995.

Part 7
Ownership Records of State-Owned Land

77-1-701. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Ownership record" means the original deed, abstract, and any other instrument signifying state ownership or other interest in real property.

(2) "State agency" means any board, bureau, department, commission, or officer of the state.

(3) "State land" means land held, possessed, or administered by the state by virtue of fee simple title, grant, or deed. This term does not include:

(a) land acquired through foreclosure of any investments purchased under the provisions of 17-6-211;

(b) land used by virtue of an interest temporary in nature, such as a lease, license, or permit; or

(c) land used for easements and rights-of-way.

History: En. Sec. 1, Ch. 467, L. 1987.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-702. Transfer of records held by secretary of state. By November 1, 1987, the secretary of state shall transfer all ownership records on file in his office to the department of state lands. The department of state lands shall further transfer the records of land held or administered by the department of transportation for highway rights-of-way and maintenance to the department of transportation and any remaining ownership records, other than those of state lands, to the state agency administering the interest or property described in such records.

History: En. Sec. 2, Ch. 467, L. 1987; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Custody and reproduction of records by Secretary of State, 2-6-111.

Duties of Secretary of State, 2-15-401.

77-1-703. Filing of ownership records. Except as provided in 77-1-706, state agencies shall file with the department ownership records of state lands held by the agency.

History: En. Sec. 3, Ch. 467, L. 1987.

77-1-704. Department to maintain repository. The department shall provide a secure yet accessible repository for the ownership records of state land.

History: En. Sec. 4, Ch. 467, L. 1987.

77-1-705. Index and verification of ownership records. (1) The department shall establish and maintain a filing system and index of the following information on state land:

(a) legal description of the land;

(b) when the land was acquired or disposed of;

(c) name of the state agency administering or disposing of the land; and

(d) name of the grantor or grantee.

(2) To the extent feasible within available funding and personnel, the department shall:

(a) verify the accuracy of information contained in the ownership records; and

(b) perfect title to state land whenever necessary.

History: En. Sec. 5, Ch. 467, L. 1987.

77-1-706. Treatment of highway lands. The department of transportation is not required to file with the department of state lands records of land used for highway rights-of-way and maintenance but is required to file with the department of state lands ownership records of state land held for administrative purposes.

History: En. Sec. 6, Ch. 467, L. 1987; amd. Sec. 3, Ch. 512, L. 1991.

77-1-707. Rules. The department of state lands may adopt rules for implementing and administering this part concerning transfer and filing of ownership records.

History: En. Sec. 7, Ch. 467, L. 1987.

Part 8

Recreational Use of State Lands

77-1-801. Recreational use license required to use state lands for general recreational purposes — penalty. (1) A person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) A person shall, upon the request of a peace officer or fish and game warden, present for inspection his recreational use license.

(3) A violator of subsection (1) or (2) is guilty of a misdemeanor and shall be fined not less than $50 or more than $500, imprisoned in the county jail for not more than 6 months, or both.

History: En. Sec. 11, Ch. 609, L. 1991.

Cross-References

Peace officer defined, 1-1-207, 46-1-202.

77-1-802. Recreational use license — fee. (1) The fee for a recreational use license must[, taking into account recommendations of the state land board advisory council,] attain full market value.

(2) Money received by the department from the sale of recreational use licenses must be credited as follows:

(a) Except as provided in subsection (2)(b), license fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts.

(b) Two dollars from the fee for each license, less 50 cents to be returned to the license dealer as a commission, must be deposited in the state lands recreational use account established by 77-1-808.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title

87, chapter 2, part 9. *(Bracketed language in subsection (1) terminates March 1, 1996—sec. 17, Ch. 586, L. 1993.)*

History: En. Sec. 12, Ch. 609, L. 1991; amd. Sec. 2, Ch. 586, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 586 in (1), after "license", substituted "must[, taking into account recommendations of the state land board advisory council,] attain full market value" for "is $5. The fee is based upon:

(a) a $3 charge as the value of 1 year of recreational use of state lands; and

(b) a $2 surcharge for the administrative costs of providing recreational access to state lands and the maintenance of a state lands recreational use account pursuant to 77-1-808"; in (2)(a), at beginning, inserted exception clause and substituted "license fees" for "proceeds collected under subsection (1)(a)"; and substituted (2)(b) concerning disposition of license fee for former (2)(b) that read: "(b) proceeds collected under the surcharge of subsection (1)(b), less 50 cents for each license to be returned as a commission to license dealers, must be deposited in the state lands recreational use account established by 77-1-808 for use by the department in the management of state lands open to general recreational use". Amendment effective July 1, 1993.

Applicability: Section 16(2), Ch. 586, L. 1993, provided: "[Section 2] [77-1-802] applies to licenses sold after February 28, 1994."

77-1-803 reserved.

77-1-804. Rules for recreational use of state lands — penalty. (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local offices of the department to administer this program whenever practical.

(2) Rules adopted under this section must address the circumstances under which the board may close legally accessible state lands to recreational use. Such action by the board may be taken upon its own initiative or upon petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and opportunity for public hearing in the area of the proposed closure, except when the department is acting under rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee at customary access points, with signs provided or authorized by the department.

(3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use or status is incompatible with recreational use. Categorical or blanket closures may be imposed on state lands due to:

(a) cabinsite and homesite leases and licenses;

(b) the seasonal presence of growing crops; and

(c) active military, commercial, or mineral leases.

(4) The board shall adopt rules that provide an opportunity for any individual, organization, or governmental agency to petition the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain reasons, including but not limited to:

(a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;

(b) damage to surface improvements of the lessee;

(c) the presence of threatened, endangered, or sensitive species or plant communities;

(d) the presence of unique or special natural or cultural features;

(e) wildlife protection;
(f) noxious weed control; or
(g) the presence of buildings, structures, and facilities.

(6) Rules adopted under this section may impose restrictions upon general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock. The board may also by rule restrict access on state lands in accordance with a block management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by recreationists on state lands is restricted to federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use.

(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it occurs under the provisions of a recreational special use license. The board may also adopt rules requiring a recreational special use license for recreational use that is not commercial, concentrated, or within the definition of general recreational use.

(8) For a violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to $1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in 87-1-601(6).

History: En. Sec. 13, Ch. 609, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

77-1-805. Liability of state and lessee. (1) The provisions of 70-16-302 that limit the liability of a landowner or his tenant for the recreational use of property apply to the state and any lessee of state lands used for general recreational purposes.

(2) The lessee is not responsible for the suppression of or for damages resulting from a fire on his leased land caused by a general recreational user, except that a lessee who observes a fire caused by a general recreational user shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority.

History: En. Sec. 14, Ch. 609, L. 1991.

77-1-806. Prior notification to lessee of recreational use — trespass — penalty. (1) If a lessee of state lands under this part desires to be notified prior to anyone entering upon his leasehold, the lessee shall post, at customary access points, signs provided or authorized by the department. The signs must set forth the lessee's or his agent's name, address, telephone number, and method of notification. The lessee or his agent shall make himself available to receive notice from recreational users or provide an alternative means for notice as prescribed by rule. When state land is posted, recreational users shall contact and identify themselves to the lessee or his agent for the purposes of minimizing impact upon the leasehold interest and learning the specific boundaries of adjacent unfenced private property.

(2) Each recreational user of state lands shall obtain permission of the lessee or his agent before entering the adjacent private property owned by the lessee. Entry to private property from adjacent state lands without permission of the landowner or his agent is an absolute liability offense. A violator of this subsection is guilty of a misdemeanor and shall be fined not less than $50 or more than $500, imprisoned in the county jail for not more than 6 months, or both.

(3) A person may be found guilty of the offense described in subsection (2) regardless of the absence of fencing or failure to post a notice in accordance with 45-6-201.

History: En. Sec. 15, Ch. 609, L. 1991.

77-1-807 reserved.

77-1-808. State lands recreational use account. (1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue received from the recreational use license established by 77-1-802;

(b) all revenue received from the imposition of fines under 77-1-801 and 77-1-806 and from civil penalties imposed pursuant to 77-1-804; and

(c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money deposited in the state lands recreational use account is statutorily appropriated, as provided in 17-7-502, and must be used by the department for the following purposes:

(a) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

(b) assistance in weed control management necessary as a result of recreational use of state lands;

(c) protection of the resource value of the trust assets; and

(d) administration and management for the implementation of recreational use of state lands.

History: En. Sec. 16, Ch. 609, L. 1991.

77-1-809. Compensation for damage to improvements, growing crops, or livestock. A lessee may apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon additional investigation as required, the department shall either grant, modify, or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from the state lands recreational use account established by 77-1-808, and the liability of the department for damage payments is limited to the existing balance of the account. Claim applications are to be considered in the order they are received.

History: En. Sec. 17, Ch. 609, L. 1991.

77-1-810. Weed control management. (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program that may include direct compensation for noxious weed control activities or participation in district and county weed control projects or department-initiated weed control activities.

(2) Funding for this program must come from the state lands recreational use account pursuant to 77-1-808.

History: En. Sec. 18, Ch. 609, L. 1991.

CHAPTER 2

TRANSFERS AND RESERVATIONS OF PROPERTY INTERESTS

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Part 1

Easements

Part Cross-References

Servitudes — easements, Title 70, ch. 17.

77-2-101. Easements for public uses. (1) The board may grant easements in state lands for schoolhouse sites and grounds, public parks, community buildings, cemeteries, and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of those properties.

(2) The board may grant an easement for right-of-way across or upon any portion of state lands for any public highway or street, any ditch, reservoir,

railroad, private road, telegraph or telephone line, or any other public use as defined in 70-30-102. This subsection shall not be construed to grant authority to convey any such land, except for the purposes above set forth.

History: (1)En. Sec. 57, Ch. 60, L. 1927; re-en. Sec. 1805.57, R.C.M. 1935; amd. Sec. 6, Ch. 257, L. 1965; amd. Sec. 53, Ch. 428, L. 1973; Sec. 81-802, R.C.M. 1947; (2)En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; Sec. 81-804, R.C.M. 1947; R.C.M. 1947, 81-802, 81-804(part).

Cross-References

Easements of state lands authorized, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

State departments — maintenance of facilities throughout state, 2-15-112.

Approval of Department of Administration — acquisition of property in Helena area by state agencies, 2-17-101.

Department of Administration custodian of property in Capitol area, 2-17-111.

Department of Fish, Wildlife, and Parks management of centennial acre, Title 2, ch. 89, part 2.

Authorization for County Commissioners to obtain property, 7-8-2201.

Authorization for city to erect buildings, 7-8-4101.

City authorized to establish trafficways and public grounds, 7-14-4101.

City authorized to establish parks, 7-16-4101.

Selection of school sites, 20-6-621.

Department of Transportation — acquisition of property, 60-4-102.

Easements allowed on riparian land, 77-2-303.

77-2-102. Application for easement. (1) Application for an easement on state land must be made to the department. It shall describe the proposed right-of-way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information the department requires.

(2) This application shall be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, duly verified by the affidavit of the county surveyor or county or city engineer or other engineer having prepared the same endorsed thereon. These plats shall show the quantity of land taken by the proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When deemed necessary by the department, these plats shall show all these facts for such smaller subdivisions as the circumstances may render desirable for the state. However, when the purpose of the right-of-way applied for is the transmission or distribution of electric energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and measurements need not be given, except the description of the location of the center line of the right-of-way, and the entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required.

History: En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(part).

77-2-103. Processing of application. (1) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right-of-way and report its findings to the board. The board shall consider the application and report and take any action it considers proper, including the fixing of compensation and damages to be paid to the state. The compensation shall be the full market value of the estate or interest disposed of through the granting of the right-of-way easement, and the damages shall be the actual damages resulting to the remaining land as nearly as they can be ascertained. If the right-of-way is granted according to the plat, the plat shall become the official plat thereof and shall be retained in the office of the department. The board shall issue right-of-way deeds for all such easements that it grants upon full payment being made.

(2) If the state land over or through which a right-of-way is applied for is under certificate of purchase or sales contract, the purchaser or his assignee must be made a party to the proceedings and his consent in writing to the laying out and establishment of the proposed highway, street, or other easement and to the amount of compensation and damages to be paid must be filed with the board before the right-of-way is granted. The board is the judge of how much compensation and damages shall be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, shall be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights-of-way on state lands.

History: En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(2), (3).

Cross-References

Full market value for estate or interest in state lands, Art. X, sec. 11, Mont. Const.

77-2-104. Nature of easements. Easements granted under 77-2-102 and 77-2-103 include permission to install and maintain poles, anchors, and other appurtenances necessary for the mechanical support of the transmission or distribution lines.

History: En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(part).

77-2-105. Termination of easements. Whenever lands granted for any of the purposes mentioned in 77-2-101(2) shall cease to be used for such purposes, said easement shall forthwith terminate upon notice to that effect to the person to whom such grant was made, served at his last known post-office address.

History: En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; R.C.M. 1947, 81-804(part).

Cross-References

How easement extinguished, 70-17-111.

77-2-106. Charge for granting of easement. The board shall charge and cause to be collected the full market value of the estate or interest disposed of through the granting of any such easement and also fix, charge, and cause to be collected the amount of the actual damages resulting to the remaining land or lands from the granting of such easement as nearly as the same can be ascertained. Where a road follows the section lines of state lands, the increased value accruing to said lands on account of construction of a road on said right-of-way easement shall be taken into consideration by the board in determining compensation, if any, for the easement.

History: En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; R.C.M. 1947, 81-804(part).

Cross-References

Full market value for estate or interest in state lands, Art. X, sec. 11, Mont. Const.

77-2-107. Involvement of lessee when land subject to prior lease. (1) Whenever any kind of right-of-way easement has been granted under this part and the state land in which it is granted is under lease, the party receiving such grant shall give due and timely notice to the lessee and shall make just settlement with him for any damages resulting to his improvements or crops or leasehold interests.

(2) Upon such settlement being made, the lessee shall open or move any fences that may obstruct the right-of-way over the lands under his lease and otherwise cooperate in the opening of the right-of-way. Proof shall be filed with the board that such settlement has been made before the deed to the easement is issued.

(3) (a) If the lessee and the party receiving the right-of-way easement are unable to agree on the value of the damages resulting from the easement, the value of the damages must be ascertained and fixed by three arbitrators, one of whom must be appointed by the lessee, one by the party receiving the easement, and the third by the two appointed arbitrators.

(b) If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the commissioner, the commissioner may appoint an arbitrator for that party. An arbitrator appointed by the commissioner has the same duties and powers as if appointed by one of the parties.

(c) The arbitrators may fix reasonable compensation for their services, which must be paid in equal shares by the owner of the easement and the lessee.

(d) The value of the damages as ascertained and fixed by the arbitrators is binding on both parties; however, if either party is dissatisfied with the valuation, he may, within 10 days, appeal from their decision to the department. The department shall examine the easements, and, except as provided in subsection (e), its decision on the appeal is final. The department shall collect the actual cost of the reexamination from the owner of the easement and the lessee in such proportion as, in its judgment, justice may demand.

(e) If either party is dissatisfied with the valuation fixed by the department, he may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court in Lewis and Clark County for judicial review of the decision.

History: En. Sec. 63, Ch. 60, L. 1927; re-en. Sec. 1805.63, R.C.M. 1935; amd. Sec. 3, Ch. 108, L. 1939; R.C.M. 1947, 81-805; amd. Sec. 1, Ch. 39, L. 1983.

Cross-References

Arbitration, Title 27, ch. 5.

77-2-108. Repealed. Sec. 4, Ch. 157, L. 1981.

History: En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; re-en. Sec. 1805.56, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973; R.C.M. 1947, 81-801(2), (3).

Part 2
Exchanges of Land

Part Cross-References

Authority of Board to exchange land, Art. X, sec. 4, Mont. Const.

77-2-201. Exchange of land with United States or tribal governments. (1) (a) The board may enter into contracts or agreements with the United States or any department thereof having jurisdiction for the waiving and relinquishment to the United States of any rights of the state in and to sections 16 and 36 of any township and to any other parcel of state lands, provided that the state shall, in lieu of the rights so waived and relinquished, receive from the United States other lands of equal or greater value.

(b) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with P.L. 88-607, as amended, (43 U.S.C. 1411 through 1418), and the current user of the land received from the United States may continue to utilize the land on the terms and conditions imposed by law or by the board.

(2) The board may enter into a contract or agreement with a tribal government as defined in 18-11-102 or with the United States for the relinquishment to the tribal government or to the United States in trust for the tribal government of any rights of the state to some or all state lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government; however, the state, in exchange for these relinquished rights, must receive from the tribal government or the United States lands of equal or greater value. No contract or agreement may be entered into under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be exchanged are located.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; re-en. Sec. 1805.19, R.C.M. 1935; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973; R.C.M. 1947, 81-304(1), (3); amd. Sec. 7, Ch. 15, L. 1979; amd. Sec. 1, Ch. 628, L. 1985.

Cross-References

Restrictions on exchange of lands with United States, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Status of exchanged lands, 77-2-217.

77-2-202. Exchange of land with counties. The board may accept on behalf of the state title in fee simple to any land owned by a county in the state and may convey in exchange therefor state land of approximately the same area and of a value not higher than the land received from the county if the exchange will result in consolidating the state lands into more compact bodies.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; re-en. Sec. 1805.19, R.C.M. 1935; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973; R.C.M. 1947, 81-304(2).

Cross-References

Authorization for County Commissioners to obtain land, 7-8-2201.

77-2-203. Exchange for private land. (1) The board is authorized to exchange state land for private land provided that the private land is of equal or greater value, as determined by the board after appraisal by a qualified land appraiser, than the state land and as closely as possible equal in area. The contents of the appraisal must be made available to any person who makes a written request to the board. The board shall place priority on exchanges which result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under 76-12-107.

(2) If the requirements of subsection (1) and 77-2-204 are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for private land if the private land borders on similar navigable lakes, streams, or other bodies of water.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(1), (3); amd. Sec. 2, Ch. 136, L. 1983; amd. Sec. 1, Ch. 287, L. 1985.

77-2-204. Notification of proposed exchange — hearing. (1) Upon receipt of a proposal for an exchange of land under this part, the board shall give notice of the proposed exchange by certified mail to each person who has leased, under chapter 1 of this title, any portion of land involved in the proposed exchange. Any such leaseholder may present written or oral comments on the proposed exchange to the board before or during the hearing required by subsection (2). The notice must contain a statement informing the recipient of this right to comment.

(2) A public hearing on any exchange under this part shall be held in the county containing the state land to be exchanged. When specific objections to the proposed exchange are raised before or during any such hearing pursuant to subsection (1), the board shall make findings of fact responding to such objections and explaining their action.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(2); amd. Sec. 2, Ch. 287, L. 1985.

77-2-205. Restriction on exchange for private land. No exchange under 77-2-203 shall be made which will induce or encourage large-scale commercial, industrial, or residential development unless the value of such development is considered in determining the fair market value and unless the proposed development will not adversely affect the resources of the existing state tracts or those tracts which the state would receive under the proposed exchange.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(4).

77-2-206. Settlement for improvements. If any state land is exchanged on which there are improvements belonging to a lessee and some person other than the lessee is the transferee, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the exchange is completed. The provisions of 77-6-301 through 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the transferee in an exchange. If settlement is not reached within 6 months of date of exchange, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

History: En. Sec. 4, Ch. 287, L. 1985.

77-2-207. Approval or disapproval of exchanges. All exchanges of state lands are subject to approval and confirmation by the board, and no exchange is considered completed until after such approval and confirmation. The board has the power and it is its duty to disapprove any exchange which in its opinion would be disadvantageous to the state.

History: En. Sec. 3, Ch. 287, L. 1985.

77-2-208 through 77-2-210 reserved.

77-2-211. Exchange of timbered, cut-over, or burned-over lands. The board may accept on behalf of the state title in fee simple to any timbered lands or lands from which the timber has been cut or burned and in exchange therefor may convey not to exceed an equal value, as determined by the board after appraisal by a qualified land appraiser, of similar state land. However, no such exchange may be made except that which in the opinion of the board will benefit the public interest. For the purpose of such an exchange, all state lands, including those referred to in 77-2-303(3), 77-2-311, and 77-5-101, are subject to be offered for such exchange, and any restrictions against their sale or disposal are, for the purpose of such an exchange, released.

History: En. Sec. 1, Ch. 180, L. 1931; re-en. Sec. 1995.1, R.C.M. 1935; amd. Sec. 99, Ch. 428, L. 1973; R.C.M. 1947, 81-2201; amd. Sec. 3, Ch. 136, L. 1983.

77-2-212. Rules. The board shall adopt and promulgate such rules and methods of procedure affecting or touching the exchanges of lands under 77-2-211 through 77-2-217 as in its judgment seems advisable to the end that the public interests may be conserved.

History: En. Sec. 5, Ch. 180, L. 1931; re-en. Sec. 1995.5, R.C.M. 1935; amd. Sec. 103, Ch. 428, L. 1973; R.C.M. 1947, 81-2205.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-2-213. Department to investigate. When a proposal for an exchange pursuant to 77-2-211 is made and the owners of the respective tracts involved seem agreeable to negotiate such exchanges, the proposal shall be referred to the department and the department shall thoroughly investigate all the lands involved in the proposal and estimate the value of all of the lands and consider every factor in connection with the proposal as may affect the public interest.

History: En. Sec. 2, Ch. 180, L. 1931; re-en. Sec. 1995.2, R.C.M. 1935; amd. Sec. 100, Ch. 428, L. 1973; R.C.M. 1947, 81-2202; amd. Sec. 2, Ch. 286, L. 1985.

77-2-214. Investigation and findings concerning exchange of land. (1) The department shall, as soon as it concludes its investigation thereof, report to the board the facts disclosed by its investigation and include in its report a recommendation concerning the proposal, including its reasons therefor in writing.

(2) After considering the report and recommendation and making such further investigation as it considers advisable, the board shall consider the entire matter, make findings and conclusions concerning the proposal, and make an order:

(a) rejecting and dismissing the proposal if in the judgment of the board the exchange is not in the public interest; or

(b) accepting the proposal and ordering the exchange to be made if in the judgment of the board the exchange is in the public interest and should be made.

(3) An order accepting the proposal shall contain an accurate description of all lands to be exchanged.

History: En. Sec. 3, Ch. 180, L. 1931; re-en. Sec. 1995.3, R.C.M. 1935; amd. Sec. 101, Ch. 428, L. 1973; R.C.M. 1947, 81-2203; amd. Sec. 8, Ch. 15, L. 1979; amd. Sec. 3, Ch. 286, L. 1985.

77-2-215. Notice and hearing concerning exchange of timbered lands. If the board approves a proposal for exchange pursuant to 77-2-211, the department of state lands shall publish at least once in some newspaper of general circulation in each county in which any of the lands involved are located a notice stating in general terms the proposal and describing the lands involved and ownership thereof. The notice shall fix a day not less than 20 and not more than 60 days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard.

History: En. Sec. 4, Ch. 180, L. 1931; re-en. Sec. 1995.4, R.C.M. 1935; amd. Sec. 102, Ch. 428, L. 1973; R.C.M. 1947, 81-2204(1).

77-2-216. Final order of board. The board shall make a final order describing the terms of the proposal for the exchange of the land involved and shall either dismiss the proposal as not being in the public interest or direct the proper officers to proceed to complete the exchange, as authorized by 77-2-211.

History: En. Sec. 4, Ch. 180, L. 1931; re-en. Sec. 1995.4, R.C.M. 1935; amd. Sec. 102, Ch. 428, L. 1973; R.C.M. 1947, 81-2204(2); amd. Sec. 1, Ch. 184, L. 1985.

77-2-217. Status of exchanged lands. All lands taken in exchange under 77-2-211 through 77-2-216 for lands granted by the United States to the state of Montana prior to July 1, 1931, shall be subject to the same restrictions, limitations, and provisions as the lands granted by the United States are now subject to. All lands granted by the state in carrying out such exchanges shall thereafter be free from the restrictions and limitations provided by The Enabling Act of the state of Montana or the other grant from the United States.

History: En. Sec. 6, Ch. 180, L. 1931; re-en. Sec. 1995.6, R.C.M. 1935; R.C.M. 1947, 81-2206(part).

Cross-References

Exchange of lands with United States, 77-2-201.

Part 3
Sales

77-2-301. Sales of state land under board control. The board is hereby vested with the power and authority to decide when sales of state lands are to be held and what state lands are to be offered for sale, subject to the limitations of this title, as the best interests of the state may appear to require.

As a general rule and except as provided in 77-2-318, no sale of state lands shall be held unless applications have been made for the purchase of lands within one county by prospective purchasers representing at least 12 families.

History: En. Sec. 70, Ch. 60, L. 1927; re-en. Sec. 1805.70, R.C.M. 1935; R.C.M. 1947, 81-907; amd. Sec. 1, Ch. 602, L. 1989.

Cross-References

Sale of state lands, Art. X, sec. 11, Mont. Const.

Public sales of state lands, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Authority of Board — sales, 77-1-204.

Sale of leased cabin or home sites or city or town lots, 77-2-318.

77-2-302. Disposition of former institutions and certain federal land grants. (1) Notwithstanding any other section in this chapter, any lands, including buildings, formerly used as or by a state institution which are no longer used for institutional purposes may be disposed of in whole or in part on such terms and in such manner as the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. Disposal of such property shall not be finally concluded until 60 days' public notice of the terms of the proposed disposal shall have been given.

(2) Notwithstanding any other section in this chapter, any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., or acquired by the state as remedial action pursuant to 75-10-704, 75-10-711, or 75-10-712 may be disposed of in whole or in part on such terms and in such manner as the board, after consultation with the director of the department of health and environmental sciences, determines to be in the state's best interest.

History: En. 81-907.1 by Sec. 1, Ch. 410, L. 1977; R.C.M. 1947, 81-907.1; amd. Sec. 3, Ch. 274, L. 1989.

Cross-References

Disposition of state land — full market value, Art. X, sec. 11, Mont. Const.

Disposition of state lands — public sale, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Eastmont Human Services Center — use or disposition, 53-20-505.

Who may purchase, 77-2-306.

77-2-303. Restrictions on land available for sale. (1) Except as provided in 77-2-318, lands classified as timberlands are not subject to sale, but timber thereon may be sold and disposed of in the manner provided by law.

(2) Lands which in the judgment of the board are likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits are not subject to sale, either the surface land or any of such deposits therein. However, this does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

(3) (a) There is also reserved from sale from all state lands bordering on navigable lakes or bordering on nonnavigable meandered lakes and from all state lands bordering on navigable streams, as the board may deem in the best interests of the state, a strip of land which shall include all the land lying between low-water mark and high-water mark and which in addition shall

extend in width landward from the line of high-water mark of such lake or stream the full width of the 40-acre tract or government lot abutting the line of high-water mark. If the width of such abutting government lot at its narrowest point is less than 100 feet, then the strip hereby reserved shall extend to and include the next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection shall be subject to the granting of easements the same as other state lands.

(b) Such strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may, however, be leased as provided in this title for the leasing of other state lands.

History: (1), (2)En. Sec. 64, Ch. 60, L. 1927; re-en. Sec. 1805.64, R.C.M. 1935; amd. Sec. 55, Ch. 428, L. 1973; Sec. 81-901, R.C.M. 1947; (3)En. Sec. 66, Ch. 60, L. 1927; re-en. Sec. 1805.66, R.C.M. 1935; amd. Sec. 7, Ch. 257, L. 1965; Sec. 81-903, R.C.M. 1947; R.C.M. 1947, 81-901, 81-903(part); amd. Sec. 2, Ch. 602, L. 1989.

Cross-References

Exchange of state riparian land for private riparian land, 77-2-203.

Exchange of timbered, cut-over, burned-over, or riparian lands, 77-2-211.

Leases:

nonmetallic minerals excluding coal, oil, and gas, Title 77, ch. 3, part 2.

coal, Title 77, ch. 3, part 3.

oil and gas, Title 77, ch. 3, part 4.

Hydroelectric powersites — sale prohibited, 77-4-201.

State forests, Title 77, ch. 5, part 1.

Riparian ownership subject to fishing rights between highwater lines, 87-2-305.

77-2-304. Mineral reservations in state lands. All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits in state lands, except sand, gravel, building stone, and brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the state. All those deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state lands acquires no right, title, or interest in or to any of those deposits. The state also reserves for itself and its lessees the right to enter upon these lands to prospect for, develop, mine, and remove those deposits and to occupy and use so much of the surface of the lands as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof.

History: En. Sec. 65, Ch. 60, L. 1927; amd. Sec. 1, Ch. 28, L. 1929; amd. Sec. 1, Ch. 183, L. 1935; re-en. Sec. 1805.65, R.C.M. 1935; amd. Sec. 1, Ch. 184, L. 1961; amd. Sec. 56, Ch. 428, L. 1973; R.C.M. 1947, 81-902; amd. Sec. 1, Ch. 157, L. 1981.

Cross-References

Reservation in certificate of purchase, 77-2-327.

Reservation in patent, 77-2-343.

Mining leases — bond to protect rights of prior purchaser, 77-3-120.

Sales, contracts for sale, and leases subject to mining leases, 77-3-122.

Coal leases — care taken to protect rights of prior purchasers, 77-3-304.

Oil and gas leases — care taken to protect rights of prior purchasers, 77-3-401.

Geothermal leases — compensation for damages to surface lessee, 77-4-107.

77-2-305. Lands within federal irrigation projects. Whenever state lands are located within the boundaries of federal irrigation projects, the land shall be sold in conformity with the classification of farm units as made by the United States, and all certificates of purchase issued for such lands shall show that the lands are located within a federal irrigation project and are or will be liable for their proper share of the reclamation charges.

History: En. Sec. 69, Ch. 60, L. 1927; re-en. Sec. 1805.69, R.C.M. 1935; R.C.M. 1947, 81-906.

Cross-References

Form of patent lien clause, 77-2-343.

77-2-306. Who may purchase. (1) State lands shall be sold only to citizens of the United States, persons who have declared their intentions to become citizens, corporations organized under the laws of this state, or towns, cities, counties, or consolidated local governments of this state. No person shall be qualified to purchase state land who has not reached the age of 18 years. As far as possible to determine, the lands shall be sold only to actual settlers or to persons who will improve the same and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value.

(2) State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in 77-2-307 for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

(3) State lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government may be sold to a tribal government as defined in 18-11-102. No sale involving land in excess of the acreage limitations in 77-2-307 may be made under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be sold are located.

History: En. Sec. 71, Ch. 60, L. 1927; re-en. Sec. 1805.71, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973; R.C.M. 1947, 81-908(part); amd. Sec. 2, Ch. 628, L. 1985; amd. Sec. 1, Ch. 313, L. 1991.

77-2-307. Limitation on acreage. (1) Except as provided in subsection (2), no person or corporation may purchase more than one section of state land, and this area shall not include more than 160 acres of land susceptible of irrigation.

(2) The limitations in subsection (1) as to area and irrigability do not apply to:

(a) lands within a federal irrigation project wherein the Congress of the United States of America authorizes water to be furnished to an area exceeding 160 irrigable acres; or

(b) lands to be sold to a tribal government as provided in 77-2-306.

History: En. Sec. 71, Ch. 60, L. 1927; re-en. Sec. 1805.71, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973; R.C.M. 1947, 81-908(part); amd. Sec. 3, Ch. 628, L. 1985.

77-2-308. Approval or disapproval of sales. All sales of state lands shall be subject to the approval and confirmation by the board, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

History: En. Sec. 82, Ch. 60, L. 1927; re-en. Sec. 1805.82, R.C.M. 1935; R.C.M. 1947, 81-918(part).

77-2-309. Discretion of board with respect to surveying and platting. Except as provided in 77-2-312, it shall be entirely optional with the board whether or not state lands or any part thereof shall be surveyed, platted, and laid off into blocks and lots as herein provided, as may appear to be for the best interests of the state.

History: En. Sec. 68, Ch. 60, L. 1927; re-en. Sec. 1805.68, R.C.M. 1935; amd. Sec. 41, Ch. 100, L. 1973; R.C.M. 1947, 81-905(part).

77-2-310. Certain lands to be platted before sale. (1) Any part of state lands adjacent to cities or towns and other state lands which in the opinion of the board may be wanted for residence or business lots shall before sale, at such time as the board may deem to be for the best interests of the state, be surveyed and laid off in blocks, lots, streets, alleys, avenues, highways, public squares, market places, and parks in conformity with the laws of the state for the survey and platting of townsites and additions thereto, conforming as nearly as may be with the ordinances of such city or town regarding the platting of additions thereto. The board must cause correct maps and plats of such lands to be made and recorded when so surveyed and not otherwise. No fee shall be charged by the county recorder or by any city officer for filing or recording such maps or plats when recorded on behalf of the state.

(2) Before the lands so surveyed and laid off are offered for sale the same shall be appraised, a separate appraisal to be placed on each lot. Such surveyed and platted land may then be sold in the same manner and upon the same terms and conditions as other state lands are sold.

History: En. Sec. 67, Ch. 60, L. 1927; re-en. Sec. 1805.67, R.C.M. 1935; R.C.M. 1947, 81-904.

Cross-References

Montana Subdivision and Platting Act — applicability, 76-3-205.

77-2-311. Survey and plat of shore lands. The board may in its discretion cause any part of the lands bordering on lakes described in 77-2-303(3) and on navigable streams which are reserved from sale to be surveyed and platted into blocks and lots, the lots to be not less than 125 feet in width, the width to be measured in the general direction of the abutting water front; but in all such surveys and plats the strip of 100 feet in width along the water front, referred to in 77-2-303(3)(a), shall be reserved for the use and enjoyment of the public.

History: En. Sec. 66, Ch. 60, L. 1927; re-en. Sec. 1805.66, R.C.M. 1935; amd. Sec. 7, Ch. 257, L. 1965; R.C.M. 1947, 81-903(part).

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Subject to exchange for timbered, cut-over, or burned-over land, 77-2-211.

77-2-312. Subdivision of lands in or near municipalities. (1) Lands within the limits of a town or city or within 3 miles of the limits must be subdivided into lots or tracts of 5 acres or less before being offered for sale.

(2) When tracts of 5 acres or less have been sold, the board shall, as necessary, cause the plat to be filed with the clerk and recorder of the county in which the land is situated, but if a person purchases two or more adjoining lots or tracts, the adjoining lots must at the option of the purchaser be included in one certificate of purchase.

History: En. Sec. 68, Ch. 60, L. 1927; re-en. Sec. 1805.68, R.C.M. 1935; amd. Sec. 41, Ch. 100, L. 1973; R.C.M. 1947, 81-905(part); amd. Sec. 1, Ch. 155, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 155 at end of (1), after "sale", deleted "and the lots must then be sold alternately at regular sales of state lands"; and made minor changes in style. Amendment effective March 24, 1993.

Cross-References

Montana Subdivision and Platting Act — applicability, 76-3-205.

77-2-313. Land subject to taxation. (1) State lands purchased from the state are subject to taxation to the full value thereof. The department of revenue shall assess the purchaser for the full value of the land on January 1 following the date of purchase. The holder of certificates of purchase to lands within irrigation districts is liable for the entire tax levied against the land thereunder on account of such irrigation district.

(2) The improvements on the land shall be assessed and taxed as other improvements on farm lands.

(3) On or before January 15 of each year, the department shall furnish the department of revenue or its agent in each county with a complete list of all state lands sold in his county during the year ending on the previous December 31. This list shall show the name and address of the purchaser, the legal description of the land, and the acreage contained therein.

History: En. Sec. 92, Ch. 60, L. 1927; re-en. Sec. 1805.92, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1953; amd. Sec. 52, Ch. 391, L. 1973; amd. Sec. 67, Ch. 428, L. 1973; amd. Sec. 7, Ch. 388, L. 1975; R.C.M. 1947, 81-928.

Cross-References

Property subject to taxation — classification, 15-6-101.

Lands within federal irrigation projects, 77-2-305.

Taxes and assessments — irrigation districts, Title 85, ch. 7, part 21.

77-2-314. Reversion of lands to state. If any lands sold under this title revert to the state for any reason, the department shall notify the department of revenue and the county treasurer of the county in which the land is situated of that fact. Upon the receipt of the notice, the department of revenue shall cancel any assessment of the land for that year, and the county treasurer shall cancel all tax liens against the land.

History: En. Sec. 94, Ch. 60, L. 1927; re-en. Sec. 1805.94, R.C.M. 1935; amd. Sec. 53, Ch. 391, L. 1973; amd. Sec. 68, Ch. 428, L. 1973; R.C.M. 1947, 81-930.

Cross-References

Exemption from property taxes — state land, 15-6-201.

77-2-315. Participation in irrigation districts — lien status of land. (1) A purchaser of state lands is hereby authorized and empowered to sign any petition that he may desire to sign for the creation of an irrigation district and the inclusion of the land purchased from the state in such irrigation district and any other petition relating to irrigation districts affecting the land so purchased by him from the state. Such petition or petitions shall have the effect of making all the interest that he then has in such land purchased from the state and all interest which he may subsequently acquire therein subject to the same liens and charges as privately owned lands under such irrigation district; and if for any reason his certificate to such state lands and his rights thereunder should be canceled and later such certificate be reinstated or a new certificate issued, such liens and charges shall stand against the interest in such lands of the holder of such certificate.

(2) The board for and on behalf of the state of Montana is hereby empowered to sign a petition for the inclusion of any lands belonging to the state in an irrigation district organized or to be organized for the purpose of cooperating with the United States under the federal reclamation laws or any act of congress relating to reclamation projects and to sign any petition for the execution of a contract between such district and the United States. The interest of the state in any lands within an irrigation district shall not be subject to assessment or taxation for any purpose whatever, nor shall the state be liable for the payment of any costs or charges whatever arising from the fact that its lands are included within an irrigation district.

(3) The interest of a purchaser of state lands in the land purchased shall be subject to the same liens as other real estate; provided, however, that in the case of sale, only the interest of the purchaser or of the assignee shall be sold. In the case of any sale under the provisions of this section, including the sale for taxes, the purchaser shall succeed to all the rights of the purchaser from the state under the certificate of purchase and a new certificate of purchase shall be issued to the person entitled thereto upon satisfactory proof being submitted to the board. In the case of sale under execution or decree of court such new certificate of purchase shall not be issued by the board until the period of redemption from such sale has expired and the sheriff's deed has been issued. In the case of sale for taxes, the new certificate shall not be issued until the tax deed has been issued.

History: **En. Sec. 93, Ch. 60, L. 1927; amd. Sec. 1, Ch. 58, L. 1929; re-en. Sec. 1805.93, R.C.M. 1935; R.C.M. 1947, 81-929.**

Cross-References

Tax deeds — ownership interests in land sold for taxes, Title 15, ch. 18.

Period of redemption — reinstatement of canceled certificates of purchase, 77-2-333.

Petition for organization of water district, 85-7-104.

Irrigation district special tax or assessment — lien, 85-7-2108.

77-2-316. Repealed. Sec. 4, Ch. 157, L. 1981.

History: **En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; re-en. Sec. 1805.56, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973; R.C.M. 1947, 81-801(1), (5), (6).**

77-2-317 reserved.

77-2-318. Sale of leased cabin or home sites or city or town lots. (1) At the request of the lessee and if consistent with the orderly development and management of state lands, the board may make available for sale, in the manner provided in this part, any leased cabin or home site or city or town lot that was under lease on October 1, 1989.

(2) The lessee requesting the sale shall have prepared a current certificate of survey for the property. The cost of preparation of the certificate of survey must be included in the settlement for improvements, as provided for in 77-2-325, if a person other than the lessee is the purchaser.

(3) The sale of a lease is exempt from the subdivision laws, except that the development of any new, replacement, or additional water supply or sewage disposal system on the property must be approved pursuant to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1.

(4) The sale of a leased cabin or home site or city or town lot under 77-2-318 through 77-2-320 must be completed no later than 10 years after October 1, 1989. A lessee may request a lease sale at any time during the 10-year period. Upon request, the board may grant a handicapped lessee or a lessee 65 years of age or older an additional 10-year period to request a sale of leased land.

(5) Upon a sale of leased land, the department shall, upon compliance with 77-2-101 through 77-2-106, grant a permanent easement across state lands to secure access using current routes.

History: En. Sec. 3, Ch. 602, L. 1989.

77-2-319. Conservation easement for certain sales. As a condition of any sale initiated pursuant to 77-2-318, the board shall, if consistent with its trust responsibility, grant to the state of Montana a conservation easement, as provided for in 76-6-203, for the leased cabin or home site or city or town lot to be sold. The conservation easement must run with the land in perpetuity and must:

(1) prohibit subdivision of the land, lake, or stream;

(2) for property within 100 feet of a river, stream, or lake, prohibit the cutting of trees except as necessary for construction on the lot, fire prevention, safety, or protection of personal property; and

(3) require that any permanent structure be set back 25 feet from the high-water mark of a lake or stream.

History: En. Sec. 4, Ch. 602, L. 1989.

77-2-320. Appraisal review board. The department shall establish an appraisal review board consisting of three independent appraisers who shall make the final decision on a disputed state appraisal made for purposes of 77-2-318 when the appraisal value is less than the amount of bid made pursuant to 77-2-323.

History: En. Sec. 5, Ch. 602, L. 1989.

77-2-321. Sales to be at public auction. All sales of state lands shall be only at public auction held at the county courthouse of the county in which the lands are located. In case no suitable room can be found in such courthouse at the time for holding the sale, then the sale may be transferred to a more convenient place within a reasonable distance of such courthouse by public announcement made at the courthouse at the time fixed for beginning the sale.

History: En. Sec. 72, Ch. 60, L. 1927; re-en. Sec. 1805.72, R.C.M. 1935; amd. Sec. 3, Ch. 184, L. 1961; R.C.M. 1947, 81-909.

Cross-References

Public sale after advertising required, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

77-2-322. Notice of sale. (1) The department shall give notice of each sale by publication in a newspaper of general circulation in the county where the sale is to be held, once each week through the 4 consecutive weeks preceding the date of sale. The notice shall give the day, date, and time of the beginning of the sale and contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing them with reference to section number and subdivision of the section or with reference to block and lot if surveyed, the number of acres in unplatted lands, and the appraised value per acre and the appraised value of each lot. As a general rule, nonirrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one section.

(2) For the convenience of the bidders, the department may assign to the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

(3) The notice shall also give the terms and conditions of sale and any additional information the department considers useful.

History: En. Sec. 73, Ch. 60, L. 1927; re-en. Sec. 1805.73, R.C.M. 1935; amd. Sec. 4, Ch. 184, L. 1961; amd. Sec. 57, Ch. 428, L. 1973; R.C.M. 1947, 81-910.

Cross-References

Advertising required for sale of state land, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

77-2-323. Sale procedure and limitation. (1) At the time fixed for the sale, the lands shall be offered for sale at auction in the order they appear in the notice of sale. Under the direction of the department the lands shall be sold to the highest qualified bidder under the following restrictions:

(a) No lands may be sold for less than the value determined by the board after appraisal by a qualified land appraiser.

(b) Tillable lands capable of producing agricultural crops may not be sold for less than $10 per acre.

(c) Lands principally valuable for grazing purposes may not be sold for less than $5 per acre.

(2) The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways.

(3) The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

(4) If any successful bidder at a sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than $50 or more than $1,000, to be determined by the board according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the department, the attorney general shall sue for the recovery thereof in the name of the state.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(part); amd. Sec. 4, Ch. 136, L. 1983.

Cross-References

Requirements of minimum prices, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Initial payment on day of sale, 77-2-329.

77-2-324. Preference to lessee of land. The lessee of the land need not make a higher bid than others, but he shall have the option to match the high bid and must be given the preference. If the lessee matches the high bid, bidding must be reopened to all bidders, with the lessee retaining the right of preference to match the ultimate high bid and be awarded the sale.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(part); amd. Sec. 6, Ch. 602, L. 1989.

Cross-References

Disposition of former institutions, 77-2-302.

77-2-325. Settlement for improvements. If any state land is sold on which there are improvements belonging to a lessee and some person other than the lessee is the purchaser, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the issuance of the certificate of purchase. The provisions of 77-6-301 through 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the purchaser. If settlement is not reached within 6 months of date of sale, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

History: En. Sec. 83, Ch. 60, L. 1927; re-en. Sec. 1805.83, R.C.M. 1935; amd. Sec. 9, Ch. 257, L. 1965; amd. Sec. 61, Ch. 428, L. 1973; R.C.M. 1947, 81-919.

77-2-326. Time of possession. In the case of lands under lease the purchaser shall be given possession by the state on March 1 next succeeding the date of sale and not before unless the lease expires prior to that date, except through special agreement between the purchaser and the lessee.

History: En. Sec. 84, Ch. 60, L. 1927; re-en. Sec. 1805.84, R.C.M. 1935; R.C.M. 1947, 81-920.

77-2-327. Certificate of purchase. (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the board and by the commissioner of state lands and attested by the seal of the board. The certificate of purchase shall contain the date of sale, the name and post-office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate shall reserve the easements for rights-of-way granted by the statutes in favor of the United States and other easements that may have been granted by the board and shall contain the reservations in favor of the state provided for in 77-2-304 relating to coal, oil, and mineral rights in the land.

(2) The certificate shall also contain information in regard to the lien of the state on crops and improvements on the land for installments of principal and interest and taxes and any additional conditions, agreements, and information the board considers necessary in order to carry out the intent of this part.

History: En. Sec. 85, Ch. 60, L. 1927; re-en. Sec. 1805.85, R.C.M. 1935; amd. Sec. 62, Ch. 428, L. 1973; R.C.M. 1947, 81-921; amd. Sec. 2, Ch. 157, L. 1981.

Cross-References

Easements to pass with land, 70-20-308.

Certificate for land within federal irrigation projects to state liability for share of reclamation charges, 77-2-305.

Approval of sale by Board required, 77-2-308.

77-2-328. Additional rules. The board may prescribe such additional rules for the conduct of these sales as in its judgment the interests of the state may demand.

History: En. Sec. 76, Ch. 60, L. 1927; re-en. Sec. 1805.76, R.C.M. 1935; R.C.M. 1947, 81-913.

Cross-References

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-2-329. Terms of payment. (1) Every purchaser of state land shall pay on the day of sale that portion of the purchase price as he may desire, but in no case less than 10% of the total sales price. In case the balance on the purchase price is not an exact multiple of $25, then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of $25.

(2) The purchaser shall pay the balance of the purchase price within 30 days. The department may extend this deadline up to 30 additional days for good cause.

History: En. Sec. 79, Ch. 60, L. 1927; re-en. Sec. 1805.79, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1939; amd. Sec. 8, Ch. 257, L. 1965; amd. Sec. 10, Ch. 22, L. 1971; amd. Sec. 59, Ch. 428, L. 1973; amd. Sec. 1, Ch. 191, L. 1974; R.C.M. 1947, 81-915; amd. Sec. 1, Ch. 104, L. 1987; amd. Sec. 1, Ch. 488, L. 1991.

Cross-References

Penalty for failure to make initial payment, 77-2-323.

77-2-330. Computation of interest and payment schedule. The balance of the purchase price shall draw interest from the date on which the sale was confirmed and approved by the board, and all installments on principal and interest shall become due and payable on that date in each succeeding year until payment has been made in full.

History: En. Sec. 86, Ch. 60, L. 1927; re-en. Sec. 1805.86, R.C.M. 1935; R.C.M. 1947, 81-922.

77-2-331. Manner of making payments. (1) The department is not required to accept fractional payments of the installments on certificate of purchase on account of the complications arising from the division of payments.

(2) The purchaser may make payment of one or more installments before the same becomes due, but unless such payments are made at least 6 months before the installments become due, no reduction may be made in the interest payments. If installments on principal and interest are paid more than 6 months prior to the due date, the interest from the date of such payment shall be figured upon the balance of the principal unpaid after the advance payment has been made up to the date on which it comes due.

(3) If for any reason any installment is not paid when due, the total of that installment, including payment on the principal and payment on interest, shall draw penalty interest at the rate of 6% per annum from the date due until the date actually paid.

(4) Payment may be made in full at any time before maturity by paying the balance on the principal and interest accrued up to the date of such payment.

History: En. Sec. 87, Ch. 60, L. 1927; re-en. Sec. 1805.87, R.C.M. 1935; amd. Sec. 63, Ch. 428, L. 1973; R.C.M. 1947, 81-923.

77-2-332. Procedure in case of default. (1) If any purchaser or assignee of state land defaults for a period of 30 days or more in the payment of any of the installments due on his certificate of purchase, the certificate is subject to cancellation. The department shall mail to him at his last known post-office address a notice of default and pending cancellation. The notice shall give him 60 additional days from the date of mailing the notice in which to make payment of the delinquent installment or installments with penalty interest.

(2) If he fails to make the payment within 60 days, the certificate of purchase shall from that date and without further notice be void, the duplicate of the certificate in the office of the department shall be canceled, and the land under the certificate shall revert to and become the property of the state to the same extent as other state lands and shall be open to lease and sale.

(3) All buildings, fences, and other improvements placed thereon subsequent to the date of execution of the certificate of purchase shall be and remain the property of the purchaser named in the certificate of purchase or of his heirs, assigns, or devisees and may be removed from the land at any time within 90 days after the date of the cancellation. If the buildings, fences, and other improvements are not removed prior to the expiration of the 90-day period, they become the property of the state.

(4) In case of cancellation of certificate of purchase or surrender of certificate of purchase and where the land is again open to lease, the former lessee has the prior right to lease the tract at the existing rate or at the rate set by competitive bidding if such occurs.

History: En. Sec. 88, Ch. 60, L. 1927; re-en. Sec. 1805.88, R.C.M. 1935; amd. Sec. 4, Ch. 141, L. 1939; amd. Sec. 1, Ch. 159, L. 1951; amd. Sec. 64, Ch. 428, L. 1973; R.C.M. 1947, 81-924.

Cross-References

Land foreclosed by Board of Investments not state land, 77-1-101.

Court actions for money due on cancellation of certificates, 77-1-111.

Sale of land under execution, 77-2-315.

Subsequent purchaser takes subject to liens, 77-2-336.

77-2-333. Reinstatement of canceled certificates of purchase. (1) In all cases where a certificate of purchase of state lands has been canceled and annulled as provided by law and the lands under such certificate have not been resold to another purchaser, the board may in its discretion reinstate the canceled certificate upon:

(a) proper application made in writing by the original purchaser or his heirs, assigns, or devisees, filed within 1 year and 6 months from such cancellation;

(b) payment of all delinquent installments of principal and interest on the certificate, together with penalty interest at the rate of 6% per annum upon all such delinquent installments from the date due until the date of actual payment; and

(c) the furnishing of proof from the county treasurer showing that there are no tax liens against the land.

(2) This reinstatement shall not have the effect of canceling any lease that the state may have issued on the land or affecting any of the provisions of said lease.

History: En. Sec. 89, Ch. 60, L. 1927; amd. Sec. 1, Ch. 101, L. 1929; re-en. Sec. 1805.89, R.C.M. 1935; R.C.M. 1947, 81-925.

77-2-334. Assignment of certificate. Certificates of purchase may be assigned to a citizen of the United States or to a person who has declared his intention to become a citizen or to a corporation organized under the laws of this state. Such assignments shall be made on forms prescribed by the department, shall be duly acknowledged as other conveyances of real estate, and shall be executed in duplicate, one copy to be filed and retained in the office of the department and one copy to be retained by the assignee. A person is not qualified to receive an assignment if the lands he has already purchased from the state together with the lands included in the assignment exceed one section. The assignee must in all respects possess the same qualifications as an original purchaser.

History: En. Sec. 90, Ch. 60, L. 1927; re-en. Sec. 1805.90, R.C.M. 1935; amd. Sec. 65, Ch. 428, L. 1973; R.C.M. 1947, 81-926.

Cross-References

Limitation on acreage, 77-2-307.

Certificate of purchase voidable for default, 77-2-332.

Subsequent purchaser may take subject to liens, 77-2-336.

77-2-335. Lost certificate. If a certificate of purchase to state lands is lost or is wrongfully withheld by any person from the owner thereof, the rightful owner may apply to the board for the issuance of a substitute certificate. This application shall be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in his office affecting the title to the land under the certificate. The board shall issue a substitute certificate of purchase to the applicant if in the judgment of the board the facts warrant its issue.

History: En. Sec. 91, Ch. 60, L. 1927; re-en. Sec. 1805.91, R.C.M. 1935; amd. Sec. 66, Ch. 428, L. 1973; R.C.M. 1947, 81-927.

77-2-336. Lien on improvements and crops for amount due state. (1) The state has a lien prior and superior to all other liens, except threshermen's liens and seed liens as specified in 71-3-701 and 71-3-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due, and other charges, as evidenced by the original loan contract and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. This lien is upon all buildings, structures, fences, and all other improvements upon the lands so sold and upon all crops growing upon any of these lands and also upon such crops after they have been separated from the lands for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and this lien is hereby expressly reserved.

(2) Any person purchasing or otherwise acquiring the improvements or crops or any part thereof takes them subject to the lien.

(3) Any representative of the department or the sheriff of the county in which the land is located or his deputy may demand of the purchaser or his agent payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or any representative of the department may immediately seize the improvements and crops, and upon giving 3 days' notice, sell and dispose of, either at private or public sale, sufficient of the crops or improvements or of both to pay the amounts due the state, together with cost and expenses of seizure and sale.

History: En. Sec. 81, Ch. 60, L. 1927; re-en. Sec. 1805.81, R.C.M. 1935; amd. Sec. 60, Ch. 428, L. 1973; R.C.M. 1947, 81-917.

Cross-References

Sale on execution of judgment, Title 25, ch. 13, part 7.

Liens — generally, Title 71, ch. 3, part 1.

Farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Lien for hail insurance, 71-3-711.

Lien for spraying or dusting crops, 71-3-904.

77-2-337. Disposition of sale proceeds. (1) The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof.

(2) All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(4).

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341.

Nonexpendable trust fund type — public school fund, 20-9-601.

Land foreclosed by Board of Investments not state land, 77-1-101.

Board subject to authority of Board of Investments, 77-1-202.

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-2-338 through 77-2-340 reserved.

77-2-341. Patents. When the purchase price has been paid in full together with interest according to the certificate, the owner thereof shall be entitled to receive a patent for the land under such certificate.

History: En. Sec. 95, Ch. 60, L. 1927; re-en. Sec. 1805.95, R.C.M. 1935; R.C.M. 1947, 81-931.

77-2-342. Execution of patents. (1) The governor and, in his absence or inability, the lieutenant governor shall execute deeds or patents of conveyance transferring without covenants any lands sold by the board under the laws of this state when full payment has been made therefor.

(2) The deed or patent shall be attested by the secretary of state, countersigned by the commissioner of state lands, and have the great seal of the state and the seal of the board thereto attached but need not be acknowledged.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part).

Cross-References

Governor executing patents, 2-15-201.

Execution of deeds — foreclosure of investment, 17-6-201(5).

77-2-343. Patent provisions. (1) Such deed or patent shall contain the reservation of easements for rights-of-way to the United States, reservation of all minerals in the land as provided in 77-2-304, and all other reservations to which the particular land conveyed is subject.

(2) If the land is located within the boundaries of a federal irrigation project, the patent shall contain a lien clause substantially in the following form: The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project.

(3) This section does not require any reservation in a patent which was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued. The statutes in effect when such certificate of purchase was issued must govern.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part); amd. Sec. 3, Ch. 157, L. 1981.

Cross-References

Irrigation districts — liens and charges, 77-2-315.

77-2-344. Copy of deed or patent as evidence. A certified copy of the record of any such deed or patent shall be received in evidence in all courts of record of this state the same as the original.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part).

77-2-345. Limitation for cancellation of patent. No action shall be brought to vacate or cancel any patent issued by the state after the expiration of 2 years from the date of such patent except upon the ground of fraud.

History: En. Sec. 97, Ch. 60, L. 1927; re-en. Sec. 1805.97, R.C.M. 1935; R.C.M. 1947, 81-933.

Cross-References

Fraud — actual and constructive, 28-2-404 through 28-2-406.

77-2-346 through 77-2-350 reserved.

77-2-351. Sale to or exchange of property with public entity. Notwithstanding any other section in this chapter, any lands may be sold to or exchanged for other land or for other consideration with another public entity on terms and in a manner as the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. The sale or exchange of the property may not be finally concluded until 60 days' public notice of the terms of the proposed sale or exchange has been given.

History: En. Sec. 1, Ch. 264, L. 1991.

Cross-References

Provisions concerning sale of public lands, The Enabling Act, sec. 11, 14 (see anno. vol. 1, Federal Materials).

Disposition of public lands, Art. X, sec. 11, Mont. Const.

Part 4

Transfer of Federal Land or Easements

77-2-401. Sale or transfer of federal land — when hearing required. (1) Prior to the sale or transfer of land within the boundaries of the state of Montana that is owned or controlled by an agency of the United States government, the commissioner of state lands must determine if there would be any impact on the management of state lands, on agricultural, wildlife, or recreational resources of the state, or on the cost of government services provided by the state, by any school district, or by any county, city, or other local government unit by reason of such sale or transfer.

(2) If the commissioner determines there would be an adverse impact under subsection (1) and that no hearing or public meeting has been or will be conducted by a federal agency affording the opportunity for expression of public opinion regarding the proposed sale or transfer and that further public input would be desirable, he shall hold a public hearing prior to the occurrence of such sale or transfer in order to provide opportunity for the expression of public sentiment regarding the proposed disposition of federal land.

(3) If a hearing will be conducted by a federal agency on the proposed sale or transfer of federal land within the state, the commissioner shall require the attendance of a representative of the department of state lands for the purposes of fulfilling the requirements of 77-2-403.

(4) The sale or transfer of easements by an agency of the United States government and the transfer of land by the United States to the state of Montana in satisfaction of land owed to the state pursuant to The Enabling Act are exempt from the operation of this section.

History: En. Sec. 1, Ch. 670, L. 1983.

77-2-402. Hearing requirements. Any hearing required under 77-2-401 must be held in a county in which the land involved in the proposed sale or transfer is located and must be held according to procedural rules which shall be adopted by the commissioner in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 2, Ch. 670, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

77-2-403. Action by commissioner. The commissioner shall take such action as he may consider appropriate, consistent with federal jurisdiction, to address concerns and issues raised during the hearing. Such action may include but is not limited to:

(1) the filing of formal requests for action by the appropriate federal agency that would alleviate concerns expressed at the hearing;

(2) the filing of a formal protest to the proposed sale or transfer.

History: En. Sec. 3, Ch. 670, L. 1983.

CHAPTER 3

ROCK, MINERAL, COAL, OIL, AND GAS RESOURCES

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Chapter Cross-References

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Minerals, Oil, and Gas, Title 82.

Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

Part 1

Prospecting Permits and Mining Leases

Part Cross-References

Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

77-3-101. Definitions. In this part the following definitions apply:

(1) "Full market value" means the highest net value of products of mining operations in United States markets, less cost of transportation and refining, not including as a deduction any cost of producing or treating at the mine.

(2) "Gems" means sapphires, rubies, and other stones commonly known as "precious stones" or "semiprecious stones", but does not mean stones or other earth materials commonly used in building or construction work.

(3) "Metalliferous minerals" means gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals.

(4) "Mining" means the carrying on of operations of any kind for the purpose of extracting from the earth ore and other earth material containing metalliferous minerals or gems and includes operations of any kind for the extraction from ores and other earth material of metalliferous minerals or gems.

(5) "Mining lease" means a lease issued by the board for the prospecting for or mining of metalliferous minerals or gems.

(6) "Mining lessee" means the holder of a mining lease whether the holder is the original lessee under the lease or holds the lease as successor of the original lessee.

(7) "Returns" means the net amount received by the shipper from products of mining operations after deducting transportation costs, smelting charges and deductions, and other treatment costs, not including as a deduction any cost of producing or treating at the mine.

History: En. Sec. 1, Ch. 148, L. 1937; amd. Sec. 35, Ch. 428, L. 1973; R.C.M. 1947, 81-601.

77-3-102. Mining leases authorized. (1) The board may, in its discretion, subject to the other provisions of this part, lease state lands, including the beds of navigable streams and the beds of navigable bodies of water and the reserved mineral rights of the state in lands sold or leased by the state, to any person, association, or corporation, for the purpose of prospecting for or mining metalliferous minerals or gems.

(2) These leases may be for a period of time determined by the board, subject to limitations contained in the grants by which the state has acquired title to lands or mineral rights so leased.

(3) Leases issued under this part shall give the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or mineral rights leased, subject to any reservations contained in the leases.

(4) In short the board in making the leases may exercise business discretion, so long as this part is not violated.

History: (1), (2)En. Sec. 2, Ch. 148, L. 1937; amd. Sec. 36, Ch. 428, L. 1973; Sec. 81-602, R.C.M. 1947; (3),(4)En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; Sec. 81-603, R.C.M. 1947; R.C.M. 1947, 81-602, 81-603(part).

Cross-References

Authority to lease, Art. X, sec. 4, Mont. Const.; 77-1-204.

Leases for production of minerals for term of years as provided by Legislature, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Eminent domain — available where surface rights in others except strip or open-pit mining, 70-30-102.

Powers and duties of Board, 77-1-202.

Purchaser of state land takes subject to state mineral rights, 77-2-304.

Sales, contracts for sale, and other leases subject to mining leases, 77-3-122.

Leasing preference to prospecting permittee, 77-3-132.

Release of record upon forfeiture of lease — penalty, 82-1-201.

Uranium mining permit required, 82-4-221.

Mine operating permit required, 82-4-335.

77-3-103. Prospecting permits authorized. Prospecting permits without lease may be issued by the board upon the payment of the issuance fee under 77-1-302. The permittee shall also pay an annual fee established by the department and approved by the board at the end of each year during the life of the permit. A permit shall provide for due diligence in the work of prospecting during the life of the permit.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).

Cross-References

Geophysical exploration — permits required, 82-1-101.

Exploration license required, 82-4-331.

77-3-104. Notice of lease or permit approval. Upon the approval of an application for a prospecting permit or a mining lease under this part, the department shall promptly give written notice, by ordinary mail, to the lessee or permittee and to any holder of an agricultural or grazing lease embracing the same land or to any holder of a certificate of purchase or patent embracing the same land. The notice shall be addressed to the permittee, mining lessee, agricultural or grazing lessee, purchaser or patentee at his last known post-office address.

History: En. Sec. 16, Ch. 148, L. 1937; amd. Sec. 48, Ch. 428, L. 1973; R.C.M. 1947, 81-616.

77-3-105. Assignment of leases or permits. In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permittee executing the assignment is not relieved of any responsibility for operations under the lease or prospecting permit until:

(1) the financial and moral responsibility of the assignee has been approved by the board; and

(2) there is deposited with the department:

(a) the assignment or an executed copy thereof;

(b) an instrument executed by the sureties upon any bonds then held by the board in connection with the mining lease or permit and then in force, consenting to the assignment and containing the agreement of the sureties to be bound by the bonds under the assignment or new bonds conforming to all the requirements of 77-3-119; and

(c) a fee prescribed under 77-1-302.

History: En. Sec. 13, Ch. 148, L. 1937; amd. Sec. 8, Ch. 22, L. 1971; amd. Sec. 45, Ch. 428, L. 1973; R.C.M. 1947, 81-613.

77-3-106. Disposition of royalties, fees, and penalties. All fees and penalties collected under this part shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the land belongs; and all moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land belongs under each particular permit or lease; provided, however, that all rentals and royalties received from "mortgage lands" shall be credited to the same fund or funds as other receipts from such lands and that all rentals and royalties received under or in connection with a lease or permit on other lands or mineral rights not acquired through any grant to the state of Montana from the United States shall be paid into the same funds into which such receipts are paid when the land is part of the grant for the benefit of the public schools of the state of Montana.

History: En. Sec. 17, Ch. 148, L. 1937; R.C.M. 1947, 81-617.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Public school fund, 20-9-601.

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-3-107 through 77-3-110 reserved.

77-3-111. Applications for mining lease. Application for a mining lease shall be made to the department on a form prescribed by it.

History: En. Sec. 6, Ch. 148, L. 1937; amd. Sec. 7, Ch. 22, L. 1971; amd. Sec. 40, Ch. 428, L. 1973; R.C.M. 1947, 81-606.

77-3-112. Examination of lands prior to leasing. (1) Before the board leases any lands for the mining of metalliferous metals or gems, the department shall investigate the character of the lands and the nature and possible extent of the mineral deposits therein for the purpose of determining whether those lands are of such a character as to warrant the issuance of a mining lease thereon and for the purpose of determining the amount of royalty and other rentals or considerations for which the lands should be leased for mining purposes under this part.

(2) Upon the filing of an application for a mining lease the board may, if the lands covered by the application have not been examined by the department, require the applicant for the lease to deposit with the department an amount of money, not exceeding $500 in any one case, which in its judgment will cover the cost of a special examination to enable the board to pass upon the application in accordance with this part. Such deposit shall be used to reimburse the state for the actual cost of the examination, and any portion of the deposit not required for such reimbursement shall, upon the approval or rejection of the application, be repaid to the applicant by the department.

(3) The department shall make and preserve complete records of all such examinations.

History: En. Sec. 11, Ch. 148, L. 1937; amd. Sec. 43, Ch. 428, L. 1973; R.C.M. 1947, 81-611.

77-3-113. Quantity of lands covered by lease. A mining lease shall cover the quantity of ground the board determines to be reasonable and consistent with the character of the ground, the type of deposit or deposits for which the lands are to be mined, and the character and size of the operation contemplated, necessary, or reasonable in good mining practice for the profitable recovery of the metalliferous minerals or gems therefrom.

History: En. Sec. 5, Ch. 148, L. 1937; amd. Sec. 39, Ch. 428, L. 1973; R.C.M. 1947, 81-605.

77-3-114. Restrictions on mining leases on lands already subject to coal, oil, or gas lease. In the case of lands covered by a lease for the mining of coal, oil, or gas, no lease for the mining upon any such land for metalliferous minerals and/or gems shall be issued to any person, association of persons, or corporation, other than the holder of such coal, oil, or gas lease while such coal, oil, or gas lease is in force, except with the written consent of the holder of such coal, oil, or gas lease.

History: En. Sec. 10, Ch. 148, L. 1937; R.C.M. 1947, 81-610.

77-3-115. Lease provisions. (1) A lease may contain reasonable provisions for preliminary prospecting periods and shall contain reasonable requirements for the prosecution of work during the prospecting period (if any) and for the prosecution of mining after the prospecting period.

(2) It may provide for the payment of rentals in conjunction with the work requirements or may prescribe cash rentals as an alternative or otherwise as the board considers best.

(3) It shall specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a time limited in the lease, remove property placed upon the leased lands by him in the event of the termination of the lease by forfeiture or by lapse of time.

(4) It may also contain other provisions the board and the lessee agree upon, not inconsistent with this part.

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).

77-3-116. Royalty provisions. In every mining lease the board shall reserve to the state a royalty which shall, together with other considerations to be paid by the mining lessee, constitute the full market value as ascertained by the board of the leasehold interest conveyed by the lease. This royalty may not be less than 5% of the returns from or of the full market value of the metalliferous minerals or gems recovered by the lessee from the state lands or reserved mineral rights covered by the lease.

History: En. Sec. 4, Ch. 148, L. 1937; amd. Sec. 2, Ch. 205, L. 1947; amd. Sec. 38, Ch. 428, L. 1973; R.C.M. 1947, 81-604(1).

Cross-References

Full market value required, Art. X, sec. 11, Mont. Const.

Royalty in pooling agreements, 77-3-121.

77-3-117. Modification of lease provisions. The board, by agreement with the permittee or lessee, may, in its discretion and upon such terms as it considers best, amend or modify the terms and conditions within the limitations of this part or extend the term of any lease or prospecting permit issued under this part, subject to the limitations contained in 77-3-102(1) and (2).

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).

77-3-118. Restrictions on removal of minerals and gems during preliminary prospecting period. No mining lessee may, during any preliminary prospecting period contained in any lease, remove any metalliferous minerals or gems from the leased premises, except as are necessary for the proper testing and sampling of the lands or mineral rights, and except as are permitted by the board.

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).

77-3-119. Bonds to state. The board may, at the time of the execution and delivery of a mining lease or at any time during the life of the lease, require a mining lessee to file with the department, for the benefit of the state, a bond or bonds conditioned to protect the rights of the state, particularly in the payment to the proper officer of the state of the royalties reserved in the mining lease. The bond or bonds shall be in a form and amount prescribed by the board. The board may at any time require new or additional bonds if in its discretion the interests of the state are not adequately protected by the bond or bonds previously filed.

History: En. Sec. 7, Ch. 148, L. 1937; amd. Sec. 41, Ch. 428, L. 1973; R.C.M. 1947, 81-607.

Cross-References

Bonds — who may issue — sureties, 33-26-101.

77-3-120. Bonds to protect prior purchasers, lessees, or contractees. (1) If the lands at the time of the issuance of a mining lease have been sold, are under contract of sale, or have been leased for agricultural, grazing, or other purposes, the board shall provide against the infringement of the rights of the prior purchaser, contractee, or lessee and among other things may at any time require the mining lessee to file with the department a corporate surety bond in a reasonable amount fixed by the board, conditioned to protect the rights of the prior purchaser, contractee, or lessee.

(2) The form of the bond shall be prescribed by the board, and the bond shall run to the state for the benefit of the prior purchaser, contractee, or lessee. New or additional bonds may be required by the board at any time.

(3) Suit may be brought upon the bond by any such prior purchaser, contractee, or lessee for alleged violation of the terms of the bond by the mining lessee. Such suit shall be brought by the claimant in the name of the state for the use and benefit of the claimant, and any recovery upon the bond shall be paid to the claimant.

History: En. Sec. 8, Ch. 148, L. 1937; amd. Sec. 42, Ch. 428, L. 1973; R.C.M. 1947, 81-608.

Cross-References

Action for use and benefit of another in name of state, Rule 17(a), M.R.Civ.P. (see Title 25, ch. 20).

Guaranty, indemnity, and suretyship — generally, Title 28, ch. 11.

Surety, corporate bonds — who may issue, 33-26-101.

77-3-121. Pooling agreements and unit plans of operation. (1) The board may enter into agreements for the pooling of acreage or yardage with others holding the mineral rights in adjoining lands for unit operation of placer mining and the apportionment of royalties on a cubic yardage or area basis in the case of placer mining deposits lying partly on land in which the state holds the mining rights and partly on land in which others hold the mining rights.

(2) From each cleanup of values under such unit operations in which any yardage or area mined on lands to which the state holds the mineral rights is included, the state is entitled to royalties computed on that proportion of the whole value of recoveries from the cleanup as the yardage or area mined from lands included in the agreement in which the state holds the mining rights bears to the total yardage or area mined and included in the cleanup.

(3) The board may also enter into agreements for the unit operation of such placer mining deposits and the apportionment of royalties upon any other equitable basis the board considers in the best interest of the state. The agreements may not change the percentage of royalties to be paid to the state under the unit operations from the percentage fixed in the lease or to a smaller percentage than the 5% minimum under 77-3-116.

History: En. Sec. 4, Ch. 148, L. 1937; amd. Sec. 2, Ch. 205, L. 1947; amd. Sec. 38, Ch. 428, L. 1973; R.C.M. 1947, 81-604(2).

77-3-122. Sales, contracts for sale, and other leases subject to mining leases. Any sale of state lands, any contract for the sale of state lands, and any lease of state lands made or issued by said board during the life of any mining lease issued under the provisions of this part shall be subject to such mining lease during the life thereof, and no bond shall be required of such mining lessee for the protection of any such purchaser, contractee, or other lessee unless provision therefor shall be made in such mining lease.

History: En. Sec. 9, Ch. 148, L. 1937; R.C.M. 1947, 81-609.

77-3-123. Failure of title. In issuing mining leases, the board and the state have leased only such right, title, and interest as the state has in the lands, metalliferous minerals, or gems therein contained. Neither the state, the board, nor any representative, agent, or employee of the state or the board are under any liability for the failure of the title of the state, in whole or in part, to the lands, metalliferous minerals, or gems covered by the lease.

History: En. Sec. 12, Ch. 148, L. 1937; amd. Sec. 44, Ch. 428, L. 1973; R.C.M. 1947, 81-612.

77-3-124 through 77-3-129 reserved.

77-3-130. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from a mining lessee or permittee under this part if the information relates to the geology of the mining lease or permit. The withholding is effective for as long as the department considers it necessary either to protect the mining lessee's or permittee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 1, Ch. 105, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

77-3-131. Limitations on prospecting permits. A permit shall be limited to prospecting for metalliferous minerals or gems and no permittee may remove from any lands or mineral rights covered by the permit any metalliferous minerals or gems except such as are necessary for the proper testing and sampling of the lands or mineral rights and except as are permitted by the board.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).

77-3-132. Leasing privileges of permittee. (1) During the life of any permit the permittee may apply for a lease of the lands or mineral rights covered by the permit, and if a lease is granted it shall be in the form and subject to all the terms and conditions specified in this part, as in the case of a mining lease issued under this part. The permittee has the preference right to a lease, upon such terms as the board considers just, subject to this part, and in any event the permittee has preference without competitive bidding and upon the most favorable terms permitted under this part to 40 contiguous acres.

(2) If some other person makes a better bid for a mining lease upon the land covered by the permit and if the board awards a mining lease to a better bidder, the board shall also require such mining lessee to pay to the permittee, prior to the issuance of the lease, the full value of all the work the permittee has performed upon the land under his permit in connection with his prospecting and exploration work. Within 30 days from the date the board gives the permittee notice of the issuance of the mining lease or within such further time as the board upon good cause shown allows, the permittee may remove from the land any machinery, equipment, improvements, and other property placed thereon by him.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).

Part 2

Nonmetallic Minerals, Excluding Coal, Oil, and Gas

77-3-201. Nonmetallic mineral leases authorized. When there are found upon state lands deposits of stone, limestone, oil shale, clay, bentonite, calcite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, or phosphate, sodium, potash, sulphur, fluorite or barite, or any other nonmetallic minerals, but not including coal, oil, or gas, valuable for building, mining, or other commercial purposes, the board may in its discretion issue permits or leases to private persons for the removal and disposition of the above-named deposits upon such terms and conditions as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

Cross-References

Authorization, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials); 77-1-204.

Eminent domain — surface rights rest in others except for strip or open-pit mining, 70-30-102.

Mining permit required, 82-4-221.

Opencut nonmetallic mining reclamation, Title 82, ch. 4, part 4.

Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

77-3-202. Fee. The fee for issuing the lease is the same as for an oil and gas lease.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

77-3-203. Duration of lease. No such lease shall be made for a longer term than 10 years.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

Cross-References

Leases for production of minerals — term of years as provided by Legislature, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

77-3-204. Royalty provisions. (1) All such leases shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands. The gross value shall be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances or as in the determination of the board is fair and reasonable.

(2) The board may demand a cash deposit to guarantee the payment of the royalties, a surety bond, or both a cash deposit and bond, as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

Cross-References

Powers and duties of Board, 77-1-202.

77-3-205. Report of lessee and payment of royalty. (1) On or before the last day of each month, every holder of a producing lease under this part shall make a report to the department on a form the department prescribes showing:

(a) the amount of substances mined or extracted from the lands in the preceding month;

(b) the price obtained;

(c) the total amount of sales; and

(d) any additional information required.

(2) The report shall be verified by affidavit of the lessee or some responsible person having knowledge of the facts and shall be accompanied by payment of the amount to the state as royalty for the month covered by the report.

History: En. Sec. 53, Ch. 60, L. 1927; re-en. Sec. 1805.53, R.C.M. 1935; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973; R.C.M. 1947, 81-702(part).

77-3-206. Disposition of royalties, fees, and penalties. The royalties, fees, and penalties received under these leases shall be credited to the various funds to which they properly belong in the same manner as is now provided for crediting the same under oil and gas leases.

History: En. Sec. 53, Ch. 60, L. 1927; re-en. Sec. 1805.53, R.C.M. 1935; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973; R.C.M. 1947, 81-702(part).

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Public school fund, 20-9-601.

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

Disposition of royalties and other money collected under oil and gas leases — credited to general fund unless otherwise disposed of, 77-3-436.

77-3-207. Land leased for other purposes. Such portions of the section or other subdivision of the land on which such deposits are located as are not needed for the quarrying or digging and removal of the stone, limestone, oil shale, clay, sand, or gravel may be leased for grazing or agricultural purposes the same as other state lands. In the case that grazing or agricultural leases are issued they shall provide for a right-of-way across the land for the removal of the stone, limestone, oil shale, clay, gravel, sand, or other deposits, but the rights of the lessee shall also be duly protected.

History: En. Sec. 54, Ch. 60, L. 1927; re-en. Sec. 1805.54, R.C.M. 1935; R.C.M. 1947, 81-703.

Cross-References

State grant of easements, Title 77, ch. 2, part 1.

77-3-208. Stone, gravel, and sand permits for public use. (1) The board may in its discretion issue permits upon such terms and conditions it determines to the department of transportation, the board of county commissioners of any county of the state, or to the governing body of a city or town and of any other political subdivision of the state granting them the right to take, remove, and use stone, gravel, or sand from any state lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance, and improvement of public roads, highways, bridges, streets, or alleys.

(2) The rights of lessees to the lands on which such stone, gravel, or sand may be located shall be properly safeguarded under the terms of the permits.

History: En. Sec. 55, Ch. 60, L. 1927; re-en. Sec. 1805.55, R.C.M. 1935; amd. Sec. 51, Ch. 428, L. 1973; R.C.M. 1947, 81-704; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Sale under certificate of purchase, 77-2-327.

77-3-209 and 77-3-210 reserved.

77-3-211. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from a lessee under this part if the information relates to the geology of the mining lease. The withholding is effective for as long as the department considers it necessary either to protect the lessee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 2, Ch. 105, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Part 3
Coal

Part Cross-References

New Coal Production Incentive Tax Credit Act, Title 15, ch. 35, part 2.

Educational impact statement, 20-1-208.

Safety in coal mines, Title 50, ch. 73.

Preference given to coal lessees in obtaining mining leases, 77-3-114.

Coal mining, Title 82, ch. 3.

Reclamation, Title 82, ch. 4.

Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

77-3-301. Coal leases authorized. The board may lease in such manner as it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal therein, upon the terms and conditions herein stated and subject to such rules as the board prescribes.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

Cross-References

Authority to grant leases, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials); 77-1-204.

Eminent domain — not available for coal mining in certain cases, 70-30-106.

Mineral reservations in state lands, 77-2-304.

Geophysical exploration — permits required, 82-1-101.

Coal mine-site location permit, 82-4-122.

Mining permit required, 82-4-221.

77-3-302. Lands subject to coal leasing. The authority to lease extends to state lands no matter how acquired and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

Cross-References

Certificates of purchase, 77-2-327.

Patents, 77-2-341.

77-3-303. Rules relating to coal leasing. The board shall have the power and authority to prescribe such additional rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state land for coal mining purposes.

History: En. Sec. 44, Ch. 60, L. 1927; re-en. Sec. 1805.44, R.C.M. 1935; R.C.M. 1947, 81-507.

Cross-References

Full market value for interest in public land, Art. X, sec. 11, Mont. Const.

Lease for production of hydrocarbons, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-3-304. Protection of rights of purchasers or prior lessees. Whenever the leased lands are under certificate of purchase or patents have been issued and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

Cross-References

Eminent domain — not available in certain cases for coal mining, 70-30-106.

Mineral rights reserved to state upon sale, 77-2-304.

Certificate of purchase, 77-2-327.

Patents, 77-2-341.

77-3-305. Limitations on leasing. The board shall not issue leases:

(1) to any citizen of another country or any person, partnership, corporation, association, or other legal entity controlled by interests foreign to the United States unless such country provides for similar or like privileges to citizens of the United States; or

(2) if, after a determination of the amount, location, and quality of the coal on the lands for lease, the extraction of the coal from such lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from such operations on such lands in the future.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part); amd. Sec. 1, Ch. 127, L. 1983.

77-3-306. Conditions on manner of mining. (1) Every coal lease shall be conditioned upon compliance with Title 82, chapter 4, parts 1 and 2.

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease after a hearing before the board.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-307. Improvements of former lessee. (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition shall be made of the improvements satisfactory to the board before a new lease is issued. If the owner of the improvements desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree on the value of such improvements, then such value shall be ascertained and fixed as provided in 77-6-306.

(2) Before a new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed on between them or as fixed by the aforesaid officers or officer or that he has tendered payment as so fixed or that the owner desires to remove his improvements.

History: En. Sec. 43, Ch. 60, L. 1927; re-en. Sec. 1805.43, R.C.M. 1935; amd. Sec. 32, Ch. 428, L. 1973; R.C.M. 1947, 81-506.

77-3-308. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from a coal mining lessee or permittee under this part if the information relates to the geology of the mining lease or permit. The withholding is effective for as long as the department considers it necessary either to protect the lessee's or permittee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 3, Ch. 105, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

77-3-309 and 77-3-310 reserved.

77-3-311. Form of lease. The board shall prescribe the form of the lease.

History: En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

77-3-312. Leasing procedures. Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public comments on such evaluation. Leases shall be awarded by a competitive bid system, including a bonus bid for the first year's rental, and no lease shall be awarded at less than fair market value.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

Cross-References

Fair market value for disposition of interest in state land required, Art. X, sec. 11, Mont. Const.

77-3-313. Bond requirements. The board shall also demand a surety company bond in such form and amount as it may determine, conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease; but a lessee may, in lieu of furnishing a surety company bond, increase the cash deposit hereinbefore provided for to such an amount as will in the judgment of the board make the furnishing of a bond unnecessary.

History: En. Sec. 42, Ch. 60, L. 1927; re-en. Sec. 1805.42, R.C.M. 1935; R.C.M. 1947, 81-505.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Corporations as sureties, 33-26-101.

77-3-314. Duration of lease. (1) Coal mining leases shall be issued for a primary term of 10 years and so long thereafter as coal is produced from such lands in commercial quantities.

(2) A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under 82-4-221 or in a mine site location permit under 82-4-122 prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit.

(3) For the purpose of this part, "commercial quantities" means that quantity of coal which can be sold at profit in the commercial market.

History: En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1,

Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

77-3-315. Repealed. Sec. 2, Ch. 538, L. 1981.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part).

77-3-316. Rental and royalty terms. (1) The compensation of the state under all coal mining leases shall be upon a rental and royalty basis and shall be fixed and determined by the board.

(2) The rental and royalty terms of each lease shall be subject to readjustment to reflect fair market value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is producing coal in commercial quantities.

(3) The rental shall be on a per acre basis but in no case shall it be less than $2 per acre.

(4) The amount of such royalty shall be based upon the kind, grade, and character of the coal in each particular mine; upon the size, shape, and nature of the coal vein, strata, or body; and upon the shipping and marketing facilities for the product. Consideration shall also be given to every other known factor affecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than 10% of the f.o.b. mine price of a ton prepared for shipment.

History: (1), (3), (4)En. Sec. 40, Ch. 60, L. 1927; re-en. Sec. 1805.40, R.C.M. 1935; amd. Sec. 3, Ch. 358, L. 1975; Sec. 81-503, R.C.M. 1947; (2)En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; Sec. 81-502, R.C.M. 1947; R.C.M. 1947, 81-502(part), 81-503.

77-3-317. Report and payment of royalty. (1) On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes showing:

(a) the number of tons mined during the preceding calendar month;
(b) the price obtained therefor at the mine;
(c) the total amount of all sales; and
(d) any additional information required by the department.

(2) The report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

History: En. Sec. 45, Ch. 60, L. 1927; re-en. Sec. 1805.45, R.C.M. 1935; amd. Sec. 33, Ch. 428, L. 1973; R.C.M. 1947, 81-508.

77-3-318. Disposition of royalties and other receipts. All fees, rentals, royalties, and bonuses collected under state coal leases shall be paid to the department and credited as follows:

(1) All fees shall be credited to the state general fund.

(2) All rentals and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grants to which the lands under lease belong.

History: En. Sec. 47, Ch. 60, L. 1927; re-en. Sec. 1805.47, R.C.M. 1935; amd. Sec. 34, Ch. 428, L. 1973; amd. Sec. 5, Ch. 358, L. 1975; R.C.M. 1947, 81-510.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Public school fund, 20-9-601.

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-3-319 and 77-3-320 reserved.

77-3-321. Coal mining permits for private use and for schools. (1) The board may in its discretion grant to any resident of this state a permit for a term of not more than 1 year to mine coal for the use of himself and his family from any coal deposit belonging to the state and not under lease upon payment to the state of the flat sum of $5 as a royalty for any amount of coal mined by him not exceeding 30 tons of 2,000 pounds.

(2) The board may also grant a similar 1-year permit to the board of trustees of any school district in this state, provided that if such school district requires more than 30 tons of coal per annum, then any additional amount required shall be paid for in advance at the rate of 12 1/2 cents per ton.

(3) Applications for such permits shall be accompanied by an affidavit to the effect that the coal is not wanted for sale or disposal to other parties but that it is wanted for the use of the applicant and his family or for the use of the school district, as the case may be.

(4) The granting of such permits shall not prevent the board from issuing the usual coal mining leases on the land from which the coal under such permit is to be taken. In cases of this kind the permittee shall remove the quantity of coal to which he is entitled as expeditiously as possible and his rights under the permit shall then automatically cease upon the issue of the lease.

History: En. Sec. 46, Ch. 60, L. 1927; re-en. Sec. 1805.46, R.C.M. 1935; R.C.M. 1947, 81-509.

Cross-References

Term "school district" includes community college districts, 20-15-403.

Free permit to remove timber for residents to use as fuel and for domestic purposes, 77-5-211.

Timber permits for farm and ranch repair and development, 77-5-213.

Part 4

Oil and Gas

Part Cross-References

Down-hole equipment exempt from taxation, 15-6-213.

New production of oil and gas, 15-23-601 through 15-23-603, 15-23-605, 15-23-607.

Stripper-well severance tax, 15-36-101.

Laborers' liens on oil and gas wells and pipelines, Title 71, ch. 3, part 10.

Oil or gas well drilling permits — environmental impact statements, 75-1-201.

Consent of oil and gas lessees required for other mining lease, 77-3-114.

Release of record upon forfeiture of lease — penalty, 82-1-201.

Oil and gas — general provisions, Title 82, ch. 10.

Surface damage and disruption payments — penalty for late payment, 82-10-504.

Oil and gas conservation, Title 82, ch. 11.

Emergencies — notice and hearing, 82-11-151.

Oil and gas production damage mitigation account, 82-11-161.

Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

77-3-401. Oil and gas leases authorized. (1) The board is hereby authorized and empowered to lease in such manner as it may determine, not inconsistent with The Enabling Act and the constitution, any state lands to which the title has vested in the state and in which the oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing, and removing the same upon the terms and conditions herein prescribed to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state.

(2) This power and authority to lease state lands for such purposes shall extend to and include all lands owned by the state under navigable lakes and streams and shall also extend to and include all those state lands which have been sold but in which the oil and gas rights have been reserved by the state; but in such cases and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the oil and gas leases to protect the rights of the purchaser or lessee.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

Cross-References

Authorization to permit leasing, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials); 77-1-204.

Reservation of mineral rights to state, 77-2-304.

Geophysical exploration — permits required, 82-1-105.

Authorization of oil and gas leasing by local governments, Title 82, ch. 10, part 2.

Notice of intention to drill or conduct seismic operations, 82-11-122.

77-3-402. Rules. (1) The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for oil and gas exploration and development. The board shall formulate rules not inconsistent with law governing the leasing of state lands for oil and gas exploration and development which shall be compiled and printed periodically.

(2) Copies of the rules and notices of changes therein shall be made available to any person desiring a copy thereof at a reasonable cost to be fixed by a rule of the board.

History: En. Sec. 7, Ch. 108, L. 1927; re-en. Sec. 1882.7, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1961; R.C.M. 1947, 81-1707.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

77-3-403. Hearings on questions related to leases. The board is hereby granted full power and authority to order and hold hearings on any matter or question involving oil and gas leases under such rules as it may adopt.

History: En. Sec. 10, Ch. 108, L. 1927; re-en. Sec. 1882.10, R.C.M. 1935; R.C.M. 1947, 81-1710(part).

77-3-404. Limitation on area under single lease. An oil or gas lease issued on state lands may not embrace more than 640 acres, except that any section surveyed by the United States which contains more than 640 acres may be included under one lease.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch.

91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-405. Leased lands to be generally compact and contiguous. (1) The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit.

(2) No lease may embrace noncontiguous subdivisions of lands unless the subdivisions are within an area comprising not more than 1 square mile.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(3).

77-3-406. Number of leases which one person may hold. Any person, association, corporation, or municipality qualified to hold an oil or gas lease on state lands may receive from the board or take through assignment or succession, will, judgment, decree, or otherwise through the operation of law more than one oil and gas lease to state lands, subject to such regulations and limitations as the board prescribes.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-407. New leases on lands leased prior to February 28, 1953. (1) In the case of all leases issued under the provisions in force prior to February 28, 1953, where oil or gas is being produced, the board shall at the expiration thereof or termination for any cause advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction on the terms then existing for such leasing. Any person, association, firm, or corporation who held such lease at the expiration thereof shall have the privilege of re-leasing the same at such highest responsible bid offered therefor upon such terms and conditions as may be prescribed by the board or the legislature.

(2) In the case of all leases issued under the provisions in force prior to February 28, 1953, where oil or gas is not being produced, the board may at the expiration thereof or termination for any cause advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction if in the judgment of the board such advertising and public auction will result in leasing of the land on terms advantageous to the state.

History: En. Sec. 15, Ch. 108, L. 1927; amd. Sec. 3, Ch. 171, L. 1933; re-en. Sec. 1882.15, R.C.M. 1935; amd. Sec. 1, Ch. 104, L. 1965; R.C.M. 1947, 81-1715.

77-3-408. Certain state officers not to be interested in leases. It is unlawful for any officer or employee of any agency of the executive branch of state government who is required to inspect or examine oil or gas wells or otherwise to gather field information in regard to prospecting for oil and gas or the production thereof to lease or to become interested in any manner in any oil or gas lease on state lands.

History: En. Sec. 20, Ch. 108, L. 1927; amd. Sec. 4, Ch. 171, L. 1933; re-en. Sec. 1882.20, R.C.M. 1935; amd. Sec. 93, Ch. 428, L. 1973; R.C.M. 1947, 81-1720.

Cross-References

Public employee standards of conduct, Title 2, ch. 2.

Public officers not to have interest in contracts, 2-2-201.

Official misconduct, 45-7-401.

77-3-409. Misconduct of officers in relation to oil and gas leases. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing or not performing an official act under the provisions of this part or for modifying the performance thereof shall be guilty of a felony.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or interest of the state therein or of any oil and gas deposits in which the state is interested or who knowingly and willfully makes any false report of any such classification or appraisal shall be guilty of a felony.

History: En. Sec. 21, Ch. 108, L. 1927; re-en. Sec. 1882.21, R.C.M. 1935; R.C.M. 1947, 81-1721.

Cross-References

Public employee standards of conduct, Title 2, ch. 2.

Jurisdiction relating to felony, 45-1-201.

Felony — defined, 45-2-101.

Bribery, 45-7-101.

Official misconduct, 45-7-401.

Felony — when no penalty is specified, 46-18-213.

77-3-410. False statements relating to oil and gas leases. Any person who shall knowingly make and file in any department, bureau, or office of the state any application, statement, or report in writing required by regulation promulgated pursuant to the provisions of this part containing any false statement of a material fact shall be guilty of a felony.

History: En. Sec. 22, Ch. 108, L. 1927; re-en. Sec. 1882.22. R.C.M. 1935; R.C.M. 1947, 81-1722.

Cross-References

Felony — definition, 45-2-101.

False swearing — misdemeanor, 45-7-202.

Unsworn falsification to authorities — misdemeanor, 45-7-203.

Felony — when no penalty is specified, 46-18-213.

77-3-411 through 77-3-420 reserved.

77-3-421. Duration of lease. (1) All state oil and gas leases entered by the board shall be granted for a primary term of not more than 10 years or less than 5 years and as long thereafter as oil or gas in paying quantities is produced, on condition that all drilling, rental, and other obligations are fully kept and performed by the lessee. However, leases for a period of less than 5 years may be issued if the board determines that such shorter term is necessary to ensure full compensation for the oil and gas resource.

(2) Oil or gas produced from any part of a unit in which state lands are included by virtue of a pooling agreement are considered to be produced from the state lands therein within the meaning of this part.

(3) The board may grant reasonable extensions of the primary term of a state oil or gas lease upon a showing that the lessee, despite due care and diligence, is or has been directly or indirectly prevented from exploring, developing, or operating the lease or is threatened with substantial economic loss, due to litigation regarding the lease or another lease in the immediate area held by the same lessee, state compliance with the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, rules adopted under Title 75, chapter 1, or adverse conditions caused by natural occurrences.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch.

91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part); amd. Sec. 1, Ch. 165, L. 1983; amd. Sec. 1, Ch. 272, L. 1989.

Cross-References

Term of years as provided by Legislature for oil and gas lease, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Pooling agreements, 77-3-430.

77-3-422. Lease extension clause. If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease but the owner of the lease is then engaged in drilling on the premises for oil or gas, then the lease continues in force so long as such drilling operations are being diligently prosecuted. If oil or gas is recovered from any such well drilled or being drilled at or after the expiration of the primary term of the lease, the lease continues in force so long as oil or gas in paying quantities is produced from the leased premises.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-423. Annual rental. (1) The annual money rentals to be paid to the state for oil and gas leases issued on and after July 1, 1975, shall be set by the board but may not be less than $1.50 for each acre of land leased.

(2) In addition to the sum of $1.50 per acre, the rental for the first year of the lease shall also include any sum in excess of $1.50 per acre offered and accepted for the first year's rental.

(3) This annual rental shall in no case be less than $100 a year.

(4) The first year's rental shall be paid before the issuance of the lease. The rentals for each subsequent year of the lease shall be due and payable before the beginning of such subsequent year, and upon failure to make such payment, the lease terminates unless there is a producing well on the lease. Rental paid for any year shall be credited against any royalty that accrues during that year.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(1), (2); amd. Sec. 1, Ch. 163, L. 1989.

Cross-References

Forfeiture and cancellation of leases — hearing, 77-3-440.

77-3-424. Power to terminate lease in absence of commencement of drilling or payment of delay drilling penalty. (1) In every oil and gas lease granted after March 3, 1955, under this part there must be reserved to the board full power to declare termination of the lease at the end of the fifth year or any subsequent year of the primary term of the lease upon failure of the lessee to either:

(a) commence the drilling of a well for oil and gas upon the leased premises; or

(b) pay a delay drilling penalty as follows:

(i) for the sixth year of the lease $1.25 per acre per year; and

(ii) for the remainder of the primary term of the lease an amount per acre per year as the board may in its discretion determine.

(2) Notice of that determination must be given to the lessee, and if the lessee applies for a hearing thereon within 10 days after receipt of the notice, the determination becomes final only after the hearing has been held.

(3) This annual delay drilling penalty must be paid each year in advance. The board shall refund delay drilling penalties paid on a lease for any year in which the lessee commences drilling on that lease.

(4) If a well for oil and gas is commenced, the drilling of the well must be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973; R.C.M. 1947, 81-1702.2(part); amd. Sec. 9, Ch. 15, L. 1979; amd. Sec. 5, Ch. 163, L. 1989.

Cross-References

Drilling permit — requirement, 82-11-134.

77-3-425. Dry hole clause. If the first well drilled is a dry hole and if a second well is not commenced on the land covered by the lease before the next anniversary of the lease following the completion of the well, the lease may be terminated by the board unless the lessee, on or before such anniversary, resumes payment of any delay drilling penalties imposed by the board. Upon the resumption of payment of any required delay drilling penalties and their continued payment, the lease continues in force during the primary term as though there had been no interruption in the delay drilling penalty payments.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973; R.C.M. 1947, 81-1702.2(part); amd. Sec. 2, Ch. 163, L. 1989.

Cross-References

Expenditure of funds from bonds for plugging wells, 82-11-136.

77-3-426. Lessee to prevent waste. Oil and gas leases issued under the provisions of this part shall all be subject to the conditions that the lessee in conducting his explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by him to the oil or gas sands or oil or gas bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the board.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

Cross-References

Forfeiture and cancellation of leases, 77-3-440.

Oil and gas conservation, Title 82, ch. 10.

77-3-427. Provision for offset wells — compensatory royalties. (1) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to drill offset wells wherever and whenever necessary to prevent waste and damage to the property of the state.

(2) The board may allow the lessee the following options in lieu of drilling an offset well:

(a) releasing the lands in question; or

(b) paying a compensatory royalty on a nonproducing lease if the board determines that such compensatory royalty will fully compensate the state for waste and damage to the property of the state. The compensatory royalty shall be based upon the estimated drainage, as determined by the board, and shall be paid on a monthly basis unless circumstances require otherwise.

(3) If the board or the lessee terminates the lease, that termination does not impair any implied covenant against drainage or the right of the board to seek damages from the lessee for the lessee's failure to protect the lease from drainage of oil or gas by a well adjacent to the state lease.

History: En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; R.C.M. 1947, 81-1719(part); amd. Sec. 1, Ch. 81, L. 1981; amd. Sec. 3, Ch. 163, L. 1989.

77-3-428. Additional development following completion of productive well. (1) The lessee shall be required, upon completing a commercially productive oil or gas well upon the leased premises, to proceed with reasonable diligence to drill such additional wells to the depth of the formation found commercially productive or to such depth as may be necessary to economically test, develop, and operate the deposits discovered.

(2) No lessee shall, however, be required to drill to completion more than one well under any one lease during any one calendar year or a total number of wells under any one lease in excess of the total number of 40-acre subdivisions of land held under such lease. As to lands found valuable for gas production only, the drilling obligation of the lessee shall be confined to a total number of wells equal to the total number of tracts comprising 160 acres of land included in the lease, except as the drilling of offset oil or gas wells necessary to protect the leased premises and deposits from loss or depletion due to wells drilled on contiguous lands shall require greater diligence in drilling and a greater number of wells to be drilled.

(3) The performance of said well drilling operations may be suspended only by and with the consent of the board during the time oil or gas previously discovered cannot be marketed at a profit or for other good cause shown.

History: En. Sec. 11, Ch. 108, L. 1927; re-en. Sec. 1882.11, R.C.M. 1935; R.C.M. 1947, 81-1711.

77-3-429. Operating agreements. Owners of state oil and gas leases may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on the state lands under their leases. No such operating agreements are in any way binding upon the state until filed with the board and approved by it. No such drilling or operating agreement in any way affects the obligations of each individual leaseholder to the state.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(3).

77-3-430. Pooling agreements and unit operations. Nothing contained in this or in prior related laws prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and the apportionment of oil or gas royalties or both on an acreage or other equitable basis and from modifying leases with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation. However, such agreements may not change the percentage of royalties to be paid to the state from the percentages as fixed in its leases. The board may modify existing pooling and unit agreements so as to commit the state lands included therein for as long as the unitized substance or substances for which the state lands are committed is produced from any lands in the unit.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(4).

Cross-References

Duration of lease, 77-3-421.
Delay of drilling, rentals, 77-3-424.
Royalty percentage, 77-3-432.
Unit operations — spacing, pooling, terms, etc., Title 82, ch. 11, part 2.

77-3-431. Report of lessees. (1) On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the department for the preceding calendar month on a form the department prescribes. The report shall show the amount of oil or gas produced and saved during the preceding month, the price obtained, the total amount of all sales, and any additional information as may be required, and it shall be signed by the lessee or some responsible person having knowledge thereof.

(2) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to make such report of operation, production, and sales in the manner, at the time, and to such representative of the state as may be required by the board.

History: (1)En. Sec. 5, Ch. 108, L. 1927; re-en. Sec. 1882.5, R.C.M. 1935; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973; Sec. 81-1705, R.C.M. 1947; (2)En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; Sec. 81-1719, R.C.M. 1947; R.C.M. 1947, 81-1705(part), 81-1719(part).

Cross-References

Payment of royalty to accompany report, 77-3-435.

77-3-432. Royalty. In every oil and gas lease granted by the state under this part and acts amendatory thereto, there shall be reserved to the state as consideration therefor a royalty in all oil and gas produced and saved from all lands covered thereby and not used for light, fuel, and operation purposes on the leased premises, which shall be equivalent to the full market value, as ascertained by the board at the date of such lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under such lease. Such royalty reservation shall be set by the board but may not be less than 12 ½% on gas and not less than 12 ½% on that portion of the average production of oil or casinghead gasoline for each producing well not exceeding 3,000 barrels for the calendar month. The state may share the expense of transporting the oil to the nearest market on a basis proportional to the state's royalty interest in such oil and at a rate per mile acceptable to the department.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part); amd. Sec. 1, Ch. 136, L. 1987; amd. Sec. 4, Ch. 163, L. 1989.

Cross-References

Disposition of royalties and other money, 77-3-436.
Limitation on overriding royalties and payments out of production, 77-3-444.

Obligation to pay royalties as essence of contract — interest, 82-10-103.

77-3-433. Shut-in gas royalty. The royalty on gas, including casinghead gas and all gaseous substances, while the same is not sold or used off the premises, shall be at the rate of $400 per well each year or the amount of the annual rental provided in said lease in lieu of such per well rate, whichever is the greater, payable on or before the annual anniversary date of the lease. As long as such leased lands contain a well capable of such production and such payment is made, the lease shall be considered as a producing lease under the lease terms.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part).

Cross-References

Disposition of royalties, 77-3-436.

77-3-434. Manner of making royalty payment. Such lease shall provide for the rendering of payment of such royalty on all oil and gas produced and saved and sold or used off the premises in the following manner and upon the following terms:

(1) the lessee shall pay to the state in cash, for all oil and gas royalty reserved, the posted field price existing on the day such oil or gas is run into any pipeline or storage tank to the credit of the lessee, plus any bonus actually paid or agreed to be paid to the lessee for such oil or gas; or

(2) at the option of the state exercised in writing by the board not oftener than every 30 days, the lessee shall deliver the state's royalty oil or gas free of cost or deductions into the pipeline to which the wells of the lessee may be connected or into any storage designated by the state and connected with such wells.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part).

77-3-435. Payments due to state. (1) The report under 77-3-431 shall be accompanied by payment of the amount due the state as royalty for the month covered by the report unless the state's royalty is being or has been paid direct by the purchaser thereof. However, where the amount of royalty due from any lease is determined by the board to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semiannually.

(2) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to make payments due the state in the manner, at the time, and to such representative of the state as may be required by the board.

History: (1)En. Sec. 5, Ch. 108, L. 1927; re-en. Sec. 1882.5, R.C.M. 1935; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973; Sec. 81-1705, R.C.M.; (2)En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; Sec. 81-1719, R.C.M. 1947; R.C.M. 1947, 81-1705(part), 81-1719(part).

77-3-436. Disposition of royalties and other money. All fees, rentals, penalties, royalties, and bonuses collected for or under state oil and gas leases shall be paid to the department and credited as follows:

(1) All fees and penalties shall be credited to the state general fund.

(2) All rentals shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof. However, all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income, the same as all other receipts from such lands.

(4) All moneys received as rentals, royalties, and bonuses for or under leases on state lands and not held in trust for the public schools of the state or for any state institution shall be credited to the state general fund unless other disposition is provided by law.

History: En. Sec. 12, Ch. 108, L. 1927; re-en. Sec. 1882.12, R.C.M. 1935; amd. Sec. 44, Ch. 100, L. 1973; amd. Sec. 89, Ch. 428, L. 1973; R.C.M. 1947, 81-1712; amd. Sec. 1, Ch. 353, L. 1985.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Public school fund, 20-9-601.

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-3-437. Amendment of existing leases. The owner or owners of any existing state oil and gas lease shall have the right to exchange it for an amended lease containing the same provisions as to the term of said lease as are then provided by law for state oil and gas leases upon filing a written application therefor and upon payment of a sum which is the full market value of the exchange, as determined by the board. The amended lease shall be subject to all other provisions, including rents and royalties, contained in the original lease and shall bear the same commencement date as the original lease.

History: En. Sec. 8, Ch. 108, L. 1927; re-en. Sec. 1882.8, R.C.M. 1935; amd. Sec. 3, Ch. 122, L. 1953; R.C.M. 1947, 81-1708.

77-3-438. Assignments of leases. (1) The assignment of any oil and gas lease issued under this part, either in whole or as to subdivisions of land embracing not less than 40 acres covered thereby, made to an assignee qualified as provided herein is permitted. Such assignment is not, however, binding upon the state until filed with the department and accompanied by the required fees, together with such proof of qualifications required by the board, and approved by the board or its lawful representative. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interest of the state in the property assigned will not in the judgment of the board be prejudiced thereby, and the decision of the board in all cases is subject to appeal upon proper court proceedings.

(2) All other assignments of oil and gas leases issued under this part or interests therein are subject to approval by the board and are binding upon the state in the discretion of the board.

History: En. Sec. 16, Ch. 108, L. 1927; re-en. Sec. 1882.16, R.C.M. 1935; amd. Sec. 90, Ch. 428, L. 1973; R.C.M. 1947, 81-1716.

77-3-439. Surrender of leases. The lessee under any oil and gas lease granted by the state may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish the lease to the state in whole or as to any legal subdivision of the lands covered thereby and be discharged from any obligation not yet accrued as to lands so surrendered and relinquished without prejudice to the continuance of the lease as to lands not surrendered or relinquished.

History: En. Sec. 18, Ch. 108, L. 1927; re-en. Sec. 1882.18, R.C.M. 1935; amd. Sec. 92, Ch. 428, L. 1973; R.C.M. 1947, 81-1718.

77-3-440. Forfeiture and cancellation of leases. (1) All oil and gas leases granted by the state pursuant to the terms of this part shall provide for forfeiture and cancellation thereof upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the state and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default.

(2) Any lessee, upon application therefor, shall be granted a hearing on any notice or demand of the board before any lease is declared forfeited or canceled by the board.

History: En. Sec. 10, Ch. 108, L. 1927; re-en. Sec. 1882.10, R.C.M. 1935; R.C.M. 1947, 81-1710(part).

Cross-References

Release of record upon forfeiture of lease — penalty, 82-1-201.

77-3-441. Restriction on new lease following termination of old lease. In all cases where an oil and gas lease issued after March 3, 1955, is surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease may be issued within 30 days from the date of cancellation or relinquishing. This restriction does not apply, however, in cases of bona fide assignment.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(4).

77-3-442. Disposition of property of lessee upon termination of lease. (1) Upon the termination for any cause of any lease issued under this part, the former lessee has 6 months after the date of the termination to remove all machinery, fixtures, improvements, buildings, and equipment belonging to him on the premises, except for casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells. As to such casing, equipment, and apparatus, any succeeding lessee or, in the event there is no succeeding lessee, the state wishing to have such property left upon the premises shall pay the reasonable value thereof to the former lessee.

(2) If the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of such casing, equipment, and apparatus, the succeeding lessee or the state, as the case may be, shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of three appraisers, one of whom shall be chosen by the successful bidder, one by the

former lessee, and the third by the two so chosen. Its appraisal shall be reported to the respective parties in writing and is final and conclusive.

(3) The former lessee may remain in possession and manage the land and property formerly covered by his lease until the value of the casing, equipment, and apparatus which the succeeding lessee or the state desires to have left upon the premises is fixed in the manner provided in this section and has been paid to him in cash. During the time the former lessee remains in such possession, he may retain the same share of the products of the premises as inured to him during the term of his lease. Should the state or other bidder not desire any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove all of his property from the lands.

History: En. Sec. 17, Ch. 108, L. 1927; re-en. Sec. 1882.17, R.C.M. 1935; amd. Sec. 91, Ch. 428, L. 1973; R.C.M. 1947, 81-1717.

77-3-443. Reservation in lease for disposition of surface. In every oil and gas lease granted pursuant to the terms hereof there shall be reserved unto the state the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under such oil and gas lease.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

77-3-444. Limitation on overriding royalties and payments out of production. (1) No person, partnership, or association may enter into an agreement which in the aggregate creates overriding royalties or payments out of the production of oil and gas in excess of 5% above the landowner's royalty payable to the state of Montana unless that agreement expressly provides that the obligation to pay overriding royalties or payments out of production may be suspended by the commissioner at any time upon a determination that the excess overriding royalties or payments out of production constitute a burden on lease operations to the extent that:

(a) proper and timely development may be retarded;

(b) continued operation of the lease may be impaired; or

(c) premature abandonment of the wells may occur.

(2) This section applies separately to any zone or portion of a lease segregated for computing a royalty due to the state of Montana.

(3) All agreements of any kind creating overriding royalties or payments out of production of oil and gas must be filed with the department within 30 days of their creation by the lessee.

History: En. Sec. 1, Ch. 157, L. 1985.

77-3-445 through 77-3-450 reserved.

77-3-451. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from an oil or gas lessee under this part if the information, including drill logs, seismic data, and lithographic descriptions, relates to the geology of the oil or gas lease. The withholding is effective for as long as the department considers it necessary either to protect the lessee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 4, Ch. 105, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Part 5

Underground Storage of Natural Gas

Part Cross-References

Eminent domain not to prejudice other mineral rights, 70-30-105.

Use of eminent domain to acquire underground gas reservoirs, 82-10-303.

Prohibited activity — injection wells, 82-11-127.

77-3-501. Lease for underground storage of natural gas authorized. (1) The board is hereby authorized and empowered to lease in such manner and upon such terms as it may determine, not inconsistent with The Enabling Act and the constitution, state lands to which the title has vested in the state, subject to existing rights, for use for the underground storage of natural gas upon the terms and conditions herein prescribed, to any natural gas public utility authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within, or through this state for ultimate public use.

(2) State lands which may be leased shall include lands in which the deposit of native gas shall have been depleted, provided the lessee pays to the state the amount specified by the board for the native gas then remaining in the lands to be leased.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(1).

Cross-References

Authorizations, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Board has authority to lease, 77-1-204.

77-3-502. Rules. The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for the underground storage of natural gas and the sale of the gas remaining in state lands in a gas field wherein native gas deposits have been depleted.

History: En. Sec. 3, Ch. 213, L. 1955; R.C.M. 1947, 81-1727.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

77-3-503. Hearings on questions related to leases. The board may order and hold hearings on any matter or question involving leases issued under 77-3-501 under such rules as it adopts.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-504. Lessee's right to hearing. Any lessee, upon application, is entitled to a hearing on any notice or demand of the department before any lease is granted, forfeited, or canceled by the board.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-505. Bond of lessees. A lessee under 77-3-501 shall furnish bond to the state in a form prescribed by the board and in an amount adequate to indemnify the state against loss, damage, or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease. No bond in excess of $20,000 is required under any one lease.

History: En. Sec. 4, Ch. 213, L. 1955; amd. Sec. 95, Ch. 428, L. 1973; R.C.M. 1947, 81-1728.

77-3-506. Disposition of leased land. In every lease granted pursuant to the terms hereof there shall be reserved unto the state the right to sell, lease, or otherwise dispose of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under a lease provided for by this part.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(2).

77-3-507. Lessee to prevent waste. (1) Leases issued under the provisions of this part shall all be subject to the conditions that the lessee in conducting the underground storage of natural gas shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled to store natural gas to the oil or gas sands or oil or gas bearing strata to the destruction or injury of oil or gas deposits.

(2) Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the board.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(3).

Cross-References

Cancellation and forfeiture of lease, 77-3-510.

77-3-508. Duration of lease. All leases issued under 77-3-501 may be granted for a period not exceeding 20 years, and the lessee has a preferential right to renew the lease for an additional period not exceeding 20 years, subject to any terms and conditions the board imposes.

History: En. Sec. 2, Ch. 213, L. 1955; amd. Sec. 94, Ch. 428, L. 1973; R.C.M. 1947, 81-1726.

77-3-509. Disposition of funds. All rentals collected for or under leases issued under 77-3-501 shall be paid to the department and credited in the same manner as rentals from oil and gas leases.

History: En. Sec. 6, Ch. 213, L. 1955; amd. Sec. 97, Ch. 428, L. 1973; R.C.M. 1947, 81-1730.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Public school fund, 20-9-601.

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

Disposition of funds from oil and gas leases, 77-3-436.

77-3-510. Cancellation and forfeiture of lease. All leases granted under 77-3-501 shall provide for their forfeiture and cancellation upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the department and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-511. Termination and surrender of lease. The lessee may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish such lease to the state and be thereupon discharged from any obligation not yet accrued.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973; R.C.M. 1947, 81-1731(1).

77-3-512. Disposition of lessee's property upon termination of lease. Upon the termination for any cause of any lease issued under 77-3-501, the lessee has 6 months after the date of the termination within which to remove all machinery, fixtures, improvements, buildings, and equipment belonging to it upon the premises.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973; R.C.M. 1947, 81-1731(2).

CHAPTER 4

GEOTHERMAL AND HYDROELECTRIC RESOURCES

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Part 1
Geothermal Resources

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77-4-101. Geothermal leases authorized. (1) The board may lease state-owned lands, including the beds of navigable streams and the beds of navigable bodies of water, to persons, associations, or corporations for prospecting, exploration, well construction, and the production of geothermal resources.

(2) The board may exercise business discretion in entering into leases under this part.

History: (1)En. 21-2601 by Sec. 1, Ch. 111, L. 1974; Sec. 81-2601, R.C.M. 1947; (2)En. 81-2604 by Sec. 4, Ch. 111, L. 1974; Sec. 81-2604, R.C.M. 1947; R.C.M. 1947, 81-2601, 81-2604(part).

Cross-References

Authorizations, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials); 77-1-204.

Recreational use of streams, Title 23, ch. 2, part 3.

Powers and duties of Board, 77-1-202.

77-4-102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Geothermal development" means any of the operations or facilities necessary for the production of geothermal resources.

(2) "Geothermal resources" means the natural heat energy of the earth, including the energy, in whatever form, which may be found in any position and at any depth below the surface of the earth, either present in, resulting from, created by, or which may be extracted from such natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource.

History: En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).

77-4-103. Rules. The board shall adopt rules governing the issuance of geothermal resource leases and the conduct of all geothermal operations. The board may also require the applicant for a geothermal lease to pay an application fee.

History: En. 81-2603 by Sec. 3, Ch. 111, L. 1974; R.C.M. 1947, 81-2603.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

77-4-104. Nature of geothermal resources. Geothermal resources are sui generis, being neither a mineral resource nor a water resource, but they are closely related to and possibly affecting and affected by water resources in many instances.

History: En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).

77-4-105. State retention of geothermal resources. No right to seek, obtain, or use geothermal resources has passed or shall pass with any existing or future lease of state or school lands.

History: **En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).**

77-4-106. Bonding requirements. The board may, at any time prior to the execution and delivery of a geothermal lease or at any time during the life of the lease, require a lessee to file with the department a bond to protect the rights of the state. The bond shall be in form and amount prescribed by the board. The board may at any time require new or additional bonds if the interests of the state will not adequately be protected by the bond previously filed.

History: **En. 81-2606 by Sec. 6, Ch. 111, L. 1974; R.C.M. 1947, 81-2606.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Corporations as sureties, 33-26-101.

77-4-107. Compensation to surface lessee. The lessee of any geothermal lease shall compensate the surface lessee for any damage to the surface or leasehold interest caused as a result of the geothermal lease. The board may require the geothermal lessee to post a bond in an amount to be set by the board to insure the payment of damages to any surface lessee. If the surface lessee and the geothermal lessee disagree as to the reasonable amount of surface damage, damage shall be ascertained in the same manner as prescribed in 77-4-129.

History: **En. 81-2607 by Sec. 7, Ch. 111, L. 1974; R.C.M. 1947, 81-2607.**

77-4-108. Water rights in connection with geothermal development. If any geothermal development located on state land requires the utilization of water, the lessee may, at any time prior to 1 year before the expiration of his lease, make application to the board for permission to secure a water right to the land under his lease. Such application shall be in writing, show the permanency of the water supply, and the estimated cost of utilizing such water resources. If the proposed plan meets with the approval of the board, permission shall be granted to the lessee to secure the desired water right for the land. Such right shall be secured in accordance with Title 85, chapter 2, and shall be filed in the name of the state. Existing water rights purchased by the geothermal lessee shall be the property of the lessee.

History: **En. 81-2611 by Sec. 11, Ch. 111, L. 1974; R.C.M. 1947, 81-2611.**

77-4-109. Conflicting leases. Where there are conflicting leases, including but not limited to geothermal, coal, mineral, and oil and gas leases, embracing the same land, the person who first was issued a lease shall be entitled to priority of rights; provided, however, that the exercise of this priority shall not interfere with actual production from the lease as determined by the board.

History: **En. 81-2612 by Sec. 12, Ch. 111, L. 1974; R.C.M. 1947, 81-2612.**

77-4-110 through 77-4-120 reserved.

77-4-121. Provisions of the lease. (1) A lease issued by the board gives the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or interests leased, subject to conditions contained in the lease.

(2) In every geothermal resource lease granted there is reserved to this state the right to sell, lease, or otherwise dispose of the surface of the lands

covered thereby subject to the rights and privileges granted the lessee under the terms of the lease.

(3) Every lease shall specify the rental and royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a specified time, remove property placed on the leased lands upon the termination of the lease by forfeiture or by lapse of time.

(4) Furthermore, the lease may contain other provisions the board and the lessee agree upon, provided that the additional terms are not inconsistent with this part.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).

77-4-122. Duration of lease. The term of each lease shall be for a primary term of 10 years and for so long thereafter as geothermal resources in paying quantities are produced, provided that all conditions and terms of the lease are fully performed by the lessee.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).

77-4-123. Extension of lease. If geothermal resources are not being produced from the leased premises at the expiration of the primary term of the lease but the owner of the lease is then engaged in drilling on the premises for geothermal resources, then the lease term shall be extended for so long as the drilling operations are diligently continued. If geothermal resources are recovered from any well drilled after the expiration of the primary term, the lease shall continue in force so long as geothermal resources in paying quantities are produced from the leased premises.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).

77-4-124. Operating agreements. Lessees may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on state lands, but no such operating agreements shall be binding upon the state until filed with the department and approved by the board. No drilling or operating agreement may affect the obligations of each individual leaseholder to the state.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(4).

77-4-125. Pooling agreements and unit operations. (1) Nothing contained in this part or other related laws shall prevent the board from entering into agreements for the pooling of acreage for unit operations for the production of geothermal resources and apportionment of geothermal royalties on an acreage or other equitable basis or from modifying the royalty provisions of existing leases and all subsequent leases in accordance with pooling agreements and unit plans of operation. No agreement may be entered into which changes the percentage of royalties to be paid to the state from the percentages fixed in its leases.

(2) Geothermal resources produced from any part of a unit in which state lands are included by virtue of a pooling agreement shall be considered to be produced from the state lands therein.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(5), (6).

77-4-126. Royalties and rentals. Geothermal leases shall be issued at an annual rental of not less than $1 per acre, payable in advance and/or a royalty which shall not be less than 10% of the amount or value of steam or other forms of heat or energy derived from the production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee and not more than 5% of any byproduct derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee.

History: **En. 81-2605 by Sec. 5, Ch. 111, L. 1974; R.C.M. 1947, 81-2605.**

77-4-127. Disposition of royalties and other receipts. (1) The department shall credit fees collected under geothermal leases to the general fund.

(2) All rentals, penalties, and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs.

History: **En. 81-2610 by Sec. 10, Ch. 111, L. 1974; R.C.M. 1947, 81-2610.**

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Public school fund, 20-9-601.

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-4-128. Permission for and disposition of improvements. (1) A geothermal lessee of state lands has the right to place upon the leased lands a reasonable amount of improvements, provided that such improvements are directly related to the purpose of the lease.

(2) Whenever another person becomes the geothermal lessee, he shall pay the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof.

(3) In determining the value of these improvements, the original cost, the present condition, and the suitableness of the improvements for the uses ordinarily made of geothermal resources shall be considered.

(4) The former lessee may, however, remove or dispose of the moveable improvements from the land within 60 days from the expiration of his lease except for the well casing and other equipment necessary for the preservation of any geothermal well. If not removed within 60 days, improvements shall become the property of the state unless the board shall grant additional time for the removal thereof. Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under 77-4-129, that he has offered to pay the value of the improvements as so fixed and determined, or that the former lessee elects to remove the improvements.

History: **En. 81-2608 by Sec. 8, Ch. 111, L. 1974; R.C.M. 1947, 81-2608.**

77-4-129. Procedure to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators so appointed. The reasonable compensation that the arbitrators may fix shall be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements so ascertained and fixed is binding on both parties.

(2) If either party is dissatisfied with the valuation so fixed, he may within 10 days appeal from their decision to the department which shall examine the improvements and make the final decision as to the value of the improvements. The department shall apportion the actual cost of the reexamination to the owner and the new lessee as justice may require. The value of the improvements shall be ascertained and fixed as provided in 77-4-128.

History: En. 81-2609 by Sec. 9, Ch. 111, L. 1974; R.C.M. 1947, 81-2609.

Part 2

Hydroelectric Resources

Part Cross-References

Educational impact statements, 20-1-208.

Rural cooperative utilities, Title 35, ch. 18.

Environmental policy, Title 75, ch. 1.

Major facility siting, Title 75, ch. 20.

Power generation negotiation process, 85-1-514.

Surface water and ground water, Title 85, ch. 2.

Environmental impact statement — water usage — fees, 85-2-124.

Water leasing program, 85-2-141.

Dam Safety Act, Title 85, ch. 15.

77-4-201. Lease or license of power sites. It shall be unlawful to sell or advertise for sale state lands constituting power sites or part of power sites capable of developing hydroelectric energy in commercial quantities; but the board is hereby granted power and authority to issue lease or license to any person, corporation, or municipality for the development of such power sites and the distribution, use, and disposition of the electric energy generated thereon, as herein more specifically provided.

History: En. Sec. 2, Ch. 123, L. 1931; re-en. Sec. 1904.2, R.C.M. 1935; R.C.M. 1947, 81-1802.

Cross-References

Leases authorized, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials); 77-1-204.

Major facility siting, Title 75, ch. 20.

77-4-202. Power site defined. The words "power site" as used in this part shall mean not only the state-owned land on which the dam is constructed, but also each separate tract of such land which will become part of the reservoir and which in and of itself makes an essential contribution to the value of the power site as a whole of not less than 5% of the entire value of such power site.

History: En. Sec. 1, Ch. 123, L. 1931; re-en. Sec. 1904.1, R.C.M. 1935; R.C.M. 1947, 81-1801.

77-4-203. Restrictions and regulations. In issuing any lease or license under the provisions of this part, the board shall have the power and it shall be its duty to incorporate in the lease or license such reasonable restrictions and regulations as it finds necessary in order to protect the interest of the state and its people.

History: En. Sec. 6, Ch. 123, L. 1931; re-en. Sec. 1904.6, R.C.M. 1935; R.C.M. 1947, 81-1806.

Cross-References

Powers and duties of Board, 77-1-202.

77-4-204. Examination of power sites. Whenever an application in writing has been presented to the board for lease or license on a power site on state lands, the board shall make such preliminary examination as to the value of the power site, as to the plans of development submitted by the applicant, and of all other matters relating to the proposed development as it deems necessary for the proper disposition of the business.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-205. Notice of proposed lease or license. If these preliminary investigations and the offer made for lease or license are such that the board deems further proceedings on the application to be justified, it shall cause notice of the proposed lease or license to be published not less than once each week during not less than 6 weeks previous to the meeting at which further consideration will be given to the application in two newspapers of general circulation throughout the state, one of such newspapers to be published in the neighborhood of the location of the power site.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-206. Meeting of board on proposed lease or license. (1) At this meeting all other applications which may have been received for lease or license to such power sites shall be duly considered together with the application originally filed.

(2) The board shall have the right to reject any or all bids.

(3) If, however, the board finds that any of the bids submitted offers to pay adequate rental for such power site, shows to the satisfaction of the board that it is capable of carrying out the proposed development and of rendering efficient service to the customers that will be served from such power development, and intends in good faith without any unnecessary delay to proceed with the development, then the board shall accept such bid. If more than one such acceptable bid is received, then the lease or license shall be awarded to the person, corporation, or municipality whose offer, considered in its totality, is the most advantageous to the state.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

Cross-References

Full market value required, Art. X, sec. 11, Mont. Const.

77-4-207. Preference to bid of municipality. In case one of the applicants is a municipality, its bid shall have preference provided that it is in all respects as advantageous to the state as the bid which has been submitted by any person or corporation.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-208. Rental for power sites. The rental to the state must be paid annually or semiannually and such rental shall not be less than the full market value of the estate or interest disposed of through the granting of the lease or license, such value to be carefully ascertained from all available sources.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Full market value required, Art. X, sec. 11, Mont. Const.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Public school fund, 20-9-601.

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-4-209. Duration of lease. The term of the lease shall not exceed 50 years.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

Cross-References

Term not to exceed 50 years, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

77-4-210. Joint development with the United States. (1) If the state land constituting such power site is part of a larger power site owned or controlled by the government of the United States, then the board may grant a joint lease or license with the United States for the development of the power site and the distribution, use, and disposition of the electric energy generated at such power site under the laws of the United States and regulations issued pursuant thereto.

(2) Such lease or license may be granted for a term not exceeding 50 years.

(3) The share or percentage of ownership of the state in such joint power site shall be in proportion to the total contribution that the lands of the state make to the value of the entire power site. Before the share of the state in such power site is advertised for lease or license, the percentage of the state's share in the entire power site must be calculated and agreed upon between the state and the United States.

(4) The fee or compensation from time to time to be paid to the state under such lease or license shall be calculated on the basis of the state's share of ownership in the entire power site as calculated and agreed to; provided, however, that it shall not be less than the full market value of the estate or interest disposed of in such lands through the granting of the lease or license to be carefully ascertained from all available sources.

(5) Before such lease or license is issued, notice thereof must be given in the same manner as herein required for the issuance of a separate lease or license by the state.

History: En. Sec. 4, Ch. 123, L. 1931; re-en. Sec. 1904.4, R.C.M. 1935; R.C.M. 1947, 81-1804.

Cross-References

Full market value required, Art. X, sec. 11, Mont. Const.

77-4-211. Amortization of investment. (1) In all cases where the lease or license issued by the United States requires the amortization of the investment made in dams, machinery, equipment, and appurtenant works, such amortization requirement shall also apply to that portion of the investment representing the state's part or share in the power site so that the state will at all times retain its full share of ownership in the power site and in the dams, machinery, equipment, and appurtenant works.

(2) If the state lands constitute a separate power site wholly owned by the state and independently developed, the lease or license issued by the state may provide for the amortization of the capital invested in the dam, machinery, equipment, and appurtenant works, not including the distribution system, so that ultimately the state will become the owner of the power site including the dam, machinery, equipment, and appurtenant works, not including the distribution system.

History: En. Sec. 5, Ch. 123, L. 1931; re-en. Sec. 1904.5, R.C.M. 1935; R.C.M. 1947, 81-1805.

CHAPTER 5

TIMBER RESOURCES

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Part 1
State Forests

Part Cross-References

County forests, Title 7, ch. 8, part 26.

77-5-101. Classification of lands as state forests. All lands at present owned by the state and all that may hereafter be acquired by the state through escheat, exchange, purchase, grant, or devise which are principally valuable for the timber that is on them or for the growing of timber or for watershed protection are hereby classified and designated "state forests" and reserved for forest production and watershed protection.

History: En. Sec. 1, Ch. 179, L. 1925; re-en. Sec. 1830.1, R.C.M. 1935; amd. Sec. 1, Ch. 145, L. 1949; amd. Sec. 1, Ch. 167, L. 1951; amd. Sec. 97, Ch. 253, L. 1974; R.C.M. 1947, 81-1401.

Cross-References

Escheat — how disposed of, 72-14-206.

State to pay assessments on state lands within organized forest protection districts, 76-13-108.

77-5-102. Designation of state forests. The following state forest units are hereby established, primarily to secure through forestry management a continuous supply of timber and the performance of watershed covers:

(1) A state forest containing lands owned or hereafter acquired by the state, now comprising about 90,000 acres, situated in the watersheds of the Stillwater and Whitefish Rivers of Flathead and Lincoln Counties shall hereafter be known and designated as the "Stillwater State Forest".

(2) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 42,000 acres, situated in the Swan River watershed of Lake County shall hereafter be known and designated as the "Swan River State Forest".

(3) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 20,000 acres, situated in the Coal Creek watershed of the North Fork of the Flathead River shall hereafter be known and designated as the "Coal Creek State Forest".

(4) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 10,000 acres situated in the watersheds of Camp and Cameron Creeks of Ross Hole of Ravalli County shall hereafter be known and designated as the "Sula State Forest".

(5) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 14,628 acres, situated in the west half of township 25 north, range 26 west; and township 23 north, range 27 west; and west half of township 22 north, range 26 west; and township 21 north, range 26 west, except sections 4, 5, 6, 7, 8, and 18, in the Thompson River watershed of Sanders County shall hereafter be known and designated as the "Thompson River State Forest".

(6) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 18,076 acres, situated in townships 13, 14, and 15 north, range 14 west; and townships 13 and 16 north, range 15 west, Montana meridian, in the Clearwater River watershed of Missoula County shall hereafter be known and designated as the "Clearwater State Forest".

(7) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 8,245 acres, situated in township 14 north, ranges 7, 8, and 9 west; and township 13 north, ranges 8 and 9 west, Montana meridian, of the Blackfoot River watershed in Lewis and Clark County shall hereafter be known and designated as the "Lincoln State Forest".

History: En. Sec. 2, Ch. 179, L. 1925; re-en. Sec. 1830.2, R.C.M. 1935; R.C.M. 1947, 81-1402.

Cross-References

County forests, Title 7, ch. 8, part 26.

77-5-103. Role of department. (1) The department shall, under the direction and control of the board, do all the field work in the selection, location, examination, appraisement, and reappraisement of state timberlands.

(2) It shall do all acts required of it by the board, and under the direction of the board it has general charge of the timberlands of the state.

(3) It shall, under the supervision of the board, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all firewardens of the state and direct and aid them in their duties; direct the protection, improvement, and condition of state forests; take such action as is authorized by law to prevent and extinguish forest, brush, and grass fires; enforce the laws pertaining to forest and brushcover lands and prosecute for any violation of those laws.

(4) The department shall establish and maintain forest fire control training programs for state firefighters and other persons requiring training.

History: En. Sec. 10, Ch. 147, L. 1909; amd. Sec. 2, Ch. 118, L. 1911; re-en. Sec. 1831, R.C.M. 1921; re-en. Sec. 1831, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1955; amd. Sec. 34, Ch. 93, L. 1969; amd. Sec. 102, Ch. 253, L. 1974; amd. Sec. 16, Ch. 397, L. 1977; R.C.M. 1947, 81-1411; amd. Sec. 1, Ch. 529, L. 1981.

Cross-References

Protection from fire — natural resources in general, Title 76, ch. 11, part 1.

Timber resources — Department of Natural Resources and Conservation, Title 76, ch. 13.

Classification of forest lands by Department of Natural Resources and Conservation, 76-13-107.

Transportation of coniferous trees — Department authority, 76-13-601.

Department defined, 77-1-101.

Management of state forests — Board, 77-1-204.

Department of Commerce to locate and maintain information on prime forestry sites, 90-1-102.

77-5-104. Firewardens. (1) The department shall appoint firewardens in the number and localities as it considers necessary.

(2) The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsibilities of firewardens, may be appointed firewardens.

(3) The following are firewardens but may not receive any additional compensation by reason of the duties imposed:

(a) sheriffs;

(b) undersheriffs;

(c) deputy sheriffs;

(d) state fish, wildlife, and parks wardens and park rangers;

(e) the state fish, wildlife, and parks director;

(f) the commissioner and employees of the department designated by the commissioner;

(g) officers of organized forest protection districts;

(h) members of the Montana highway patrol;

(i) officers of the national park service residing in Montana;

(j) officers of the bureau of Indian affairs;

(k) county rural fire chiefs; and

(l) employees of the state fire prevention and investigation program provided for in 2-15-2005.

(4) The firewardens shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders.

History: En. Sec. 11, Ch. 147, L. 1909; re-en. Sec. 1833, R.C.M. 1921; re-en. Sec. 1833, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1955; amd. Sec. 103, Ch. 253, L. 1974; amd. Sec. 17, Ch. 17, L. 1977; R.C.M. 1947, 81-1412; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 4, Ch. 286, L. 1985; amd. Sec. 10, Ch. 662, L. 1991; amd. Sec. 1, Ch. 310, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 310 inserted (3)(k) to include county rural fire chiefs; inserted (3)(1) to include employees of the state fire program; and made minor changes in style.

Cross-References

Protection of forest resources, Title 76, ch. 13, part 1.

Forest fire season, 76-13-102(6), 76-13-203.

Burning permits, 76-13-121.

Provision of fire protection services, Title 76, ch. 13, part 2.

Department defined, 77-1-101.

77-5-105. Powers of firewardens. (1) All firewardens have the power of peace officers to make arrests without warrants for violations in their presence of any state or federal forest laws, and a firewarden is not liable for civil action for trespass committed in the discharge of his duties. A firewarden who has information which shows, with reasonable certainty, that a person has violated any provision of those forest laws shall immediately take action against the offender by making complaint before the proper magistrate, or by information to the proper county attorney and shall obtain all possible evidence pertaining thereto.

(2) All firewardens shall have authority to call upon any able-bodied citizen between the ages of 18 and 50 years, resident in the vicinity, for assistance in putting out fires; and any such person who refuses to obey such summons, except for good and sufficient reason, is guilty of a misdemeanor and upon conviction shall be fined in a sum not less than $15 or more than $50 or imprisonment in the county jail not less than 1 or more than 30 days or both such fine and imprisonment. No citizen shall be called upon to fight fire a total of more than 5 days in one year.

History: (1)En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R.C.M. 1921; re-en. Sec. 1834, R.C.M. 1935; amd. Sec. 104, Ch. 253, L. 1974; Sec. 81-1413, R.C.M. 1947; (2)En. Sec. 13, Ch. 147, L. 1909; re-en. Sec. 1835, R.C.M. 1921; re-en. Sec. 1835; R.C.M. 1935; Sec. 81-1414, R.C.M. 1947; R.C.M. 1947, 81-1413(part), 81-1414.

Cross-References

Rural fire protection — county or district, Title 7, ch. 33, part 22.

State may recover fire suppression costs, 50-63-103.

Provisions for fire protection on private lands, Title 76, ch. 13, part 2.

77-5-106. Misconduct by paid firewarden. Failure on the part of a paid firewarden to comply with the duties prescribed in this chapter is a misdemeanor, punishable by a fine of not less than $20 or more than $1,000 or imprisonment in the county jail for not less than 10 days or more than 12 months or by both such fine and imprisonment. Upon his conviction, the district court wherein he is convicted shall immediately declare his office vacant and notify the proper appointing power thereof.

History: En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R.C.M. 1921; re-en. Sec. 1834, R.C.M. 1935; amd. Sec. 104, Ch. 253, L. 1974; R.C.M. 1947, 81-1413(part).

Cross-References

Vacancy for violation of official duties, 2-16-501.

Official misconduct — forfeiture of office, 45-7-401.

Part 2
Timber Sales and Removal

77-5-201. Sale of timber. (1) Under the direction of the board, the department may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under such rules as may be established by the board.

(2) Timber proposed for sale in excess of 100,000 board feet shall be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department shall receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) In cases of emergency due to fire, insect, fungus, parasite, or blowdown, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any or all bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

History: En. Sec. 4, Ch. 179, L. 1925; re-en. Sec. 1830.4, R.C.M. 1935; amd. Sec. 98, Ch. 253, L. 1974; amd. Sec. 1, Ch. 301, L. 1977; R.C.M. 1947, 81-1404(part); amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 139, L. 1983.

Cross-References

Loggers' and logging camp cooks' liens, 71-3-601.

Declaration of insect infestation zone, 76-13-303.

Department defined, 77-1-101.

Permits without advertising, 77-5-212.

77-5-202. Agreement with purchaser — bond. (1) Upon award of sale the purchaser shall execute a formal agreement, approved by the board, which describes the area on which the timber is to be cut, the approximate quantity to be cut by species, and the rate for each product of each species. The agreement shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling, and slash disposal and such other rules as in the discretion of the board are essential to the perpetuation of the state forests.

(2) (a) Except as provided in subsection (2)(b), as a guarantee for the faithful performance of the agreement, the purchaser shall be required to furnish a bond, with sufficient sureties, to the state of Montana, in an amount equal to the potential loss to the state, as determined by the department.

(b) The bond required under this section must be in an amount equal to at least 5% of the estimated value of the timber sold.

History: (1)En. Sec. 4, Ch. 179, L. 1925; re-en. Sec. 1830.4, R.C.M. 1935; amd. Sec. 98, Ch. 253, L. 1974; amd. Sec. 1, Ch. 301, L. 1977; Sec. 81-1404, R.C.M. 1947; (2)En. Sec. 5, Ch. 179, L. 1925; re-en. Sec. 1830.5, R.C.M. 1935; Sec. 81-1405, R.C.M. 1947; R.C.M. 1947, 81-1404(part), 81-1405; amd. Sec. 1, Ch. 373, L. 1989.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Surety bonds, 33-26-101.

Fire hazard reduction agreement and bond, 76-13-408.

Duty of purchaser to insure compliance with fire hazard reduction, 76-13-409.

77-5-203. Breach of timber sale agreement. For breach of timber sale agreement, the department may suspend cutting or removal of the timber and take such steps as are advisable upon advice and counsel of the attorney general to adjust the breach or to liquidate the state's claim for damages or it may submit the case with full report as to damages sustained by the state to the attorney general for collection on the bond.

History: En. Sec. 6, Ch. 179, L. 1925; re-en. Sec. 1830.6, R.C.M. 1935; amd. Sec. 99, Ch. 253, L. 1974; R.C.M. 1947, 81-1406; amd. Sec. 1, Ch. 529, L. 1981.

Cross-References

Attorney General — member of Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

Attorney General — duties, 2-15-501.

Department defined, 77-1-101.

77-5-204. Sale of timber — fee for forest improvement. (1) The board may sell timber on state lands, at a price per 1,000 feet that, in the board's judgment, is in the best interest of the state, provided that live timber is not sold for less than:

(a) $3 per 1,000 feet for white pine, yellow pine, and spruce; or

(b) $1.50 per 1,000 feet for all other timber species.

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by the board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before the sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible:

(a) the value per 1,000 feet of all merchantable timber;

(b) the condition of the timber relative to risk from fires or other damage;

(c) the timber's distance from the nearest lake, stream, or railroad; and

(d) the timber's value as a protection to a watershed.

(4) In addition to the price of the timber established under subsection (1), the board may require a timber purchaser to pay a fee for forest improvement. Revenue from the fee must be deposited in the state special revenue fund to the credit of the department and, as appropriated by the legislature, may be used only for:

(a) disposing of logging slash;

(b) acquiring access and maintaining roads necessary for timber harvesting on state lands;

(c) reforesting, thinning, and otherwise improving the condition and income potential of forested state lands; and

(d) complying with legal requirements for timber harvesting.

History: En. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919; re-en. Sec. 1872, R.C.M. 1921; amd. Sec. 1, Ch. 132, L. 1933; re-en. Sec. 1872, R.C.M. 1935; amd. Sec. 219, Ch. 147, L. 1963; amd. Sec. 82, Ch. 428, L. 1973; R.C.M. 1947, 81-1601; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 446, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 446 in (3), in first sentence before "appraised", deleted "estimated and" and at beginning of second sentence substituted "An appraisal" for "These estimates and appraisals"; in (4) substituted first sentence establishing a forest improvement fee for former language that read: "The board may set fees for brush disposal on state lands. The board may also establish a fee for timber stand improvement on timber cut on state lands"; inserted (4)(a) through (4)(d) regarding uses of fee revenue that may be funded by legislative appropriation; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Burning permits, 76-13-121.

Spark arresters required, 76-13-125.

Control of timber slash and debris, Title 76, ch. 13, part 4.

Department defined, 77-1-101.

77-5-205. Approval or disapproval of sales. All sales of timber on state lands shall be subject to the approval and confirmation by the board, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

History: En. Sec. 82, Ch. 60, L. 1927; re-en. Sec. 1805.82, R.C.M. 1935; R.C.M. 1947, 81-918(part).

Cross-References

Duties of Board, 77-1-202.

77-5-206. Management of timber by department. (1) The department shall supervise all the management of timber before it is cut and secure the most complete utilization of all forest products consistent with the current forest management practices.

(2) It shall instruct and supervise the cruisers, forest wardens, and scalers in the conduct of their work and fix and establish the standard practice in timber sales administration.

(3) Records of converting factors, units of measure, and the scale of logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale, and the name of the scaler.

(4) Where the volume of timber involved is not in excess of 1 million board feet log scale, the department may designate each tree to be cut and make a tree scale measurement of all trees to be sold.

History: En. Sec. 8, Ch. 179, L. 1925; re-en. Sec. 1830.8, R.C.M. 1935; amd. Sec. 1, Ch. 40, L. 1945; amd. Sec. 1, Ch. 219, L. 1955; amd. Sec. 1, Ch. 145, L. 1963; amd. Sec. 100, Ch. 253, L. 1974; R.C.M. 1947, 81-1408; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 110, L. 1991.

Cross-References

Transportation of coniferous trees — Department authority, 76-13-601.

Department defined, 77-1-101.

77-5-207. Salvage timber program. (1) The department shall establish a salvage timber program that provides for the timely salvage logging on state forests of dead or dying timber or timber that is threatened by insects, disease, fire, or windthrow. In managing the harvest of salvage timber, the department shall consider:

(a) the economic value of the timber to be salvaged;
(b) the cost of salvage efforts; and
(c) the long-term costs to all forest resources from insects, disease, or fire that otherwise might be controlled through salvage operations.

(2) The department shall, to the extent practicable, harvest dead and dying timber before there is substantial wood decay and value loss.

(3) The department may sell salvage timber pursuant to this part.

(4) The department's salvage timber program may not take precedence over the timely sale and harvest of green timber.

History: En. Sec. 2, Ch. 285, L. 1993.

77-5-208 through 77-5-210 reserved.

77-5-211. Free permit to remove timber. Permits may be issued free of charge for dead, down, or inferior timber in such quantities and under such restrictions and regulations as the board may approve for fuel and domestic purposes to residents and settlers of the state.

History: En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).

Cross-References

Coal mining permits for private use and for schools, 77-3-321.

77-5-212. Commercial permits for timber removal. (1) Permits may be issued to citizens of the state for commercial purposes at commercial rates without advertising under such restrictions and rules as the board may approve for timber in quantities of less than 100,000 feet board measure; and in cases of emergency due to fire, insect, fungus, parasite, or blowdown and no other, in quantities of less than 200,000 feet board measure.

(2) Repeated permits of this kind shall not be issued to avoid advertising and the consequent competition secured thereby.

History: En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).

Cross-References

Standard timber sales, 77-5-201.

77-5-213. Permits for farm and ranch repair and development. Permits for cutting and removal of timber may be issued to farmers, ranchers, and prospectors with such restrictions and regulations as the board may approve for timber in quantities of 25,000 feet board measure or less when it is to be used for domestic purposes in the repair and development of the ranch or farm; provided, that not to exceed 25,000 feet board measure shall be granted in any one year to any one person. The rates of charge for such permits shall be fixed by the board.

History: En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).

Cross-References

Coal mining permits for private use and for schools, 77-3-321.

Part 3
Streamside Management Zones

77-5-301. Findings and purpose. (1) The legislature finds that the streamside management zone:

(a) acts as an effective sediment filter to maintain water quality;

(b) provides shade to regulate stream temperature;

(c) supports diverse and productive aquatic and terrestrial riparian habitats;

(d) protects the stream channel and banks;

(e) provides large, woody debris that is eventually recruited into a stream to maintain riffles, pools, and other elements of channel structure; and

(f) promotes floodplain stability.

(2) The legislature further finds that maintaining the integrity of forest streams is crucial to the quality and quantity of water available to Montanans for domestic, agricultural, industrial, and recreational use.

(3) The legislature further finds that forest streams are highly susceptible to impacts from land development and that in many cases forest practices in streamside zones in Montana are causing excessive and unnecessary damage to the banks, beds, and protective vegetation of forest streams.

(4) The legislature further finds that, through careful management in the streamside zone, owners and operators can achieve timber harvest goals without sacrificing water quality or impairing the beneficial uses of the water.

(5) The purposes of this part are:

(a) to protect the legitimate public interest in the quality and quantity of forest waters;

(b) to provide for standards, oversight, rehabilitation, and penalties to ensure that forest practices are conducted in a manner that conserves the integrity of Montana's streamside zones;

(c) to provide guidelines for the management of wildlife habitat in streamside zones; and

(d) to allow operators necessary flexibility to use practices appropriate to site-specific conditions in the streamside management zone.

History: En. Sec. 1, Ch. 608, L. 1991.

77-5-302. Definitions. As used in this part, the following definitions apply:

(1) "Alternative practices" means forest practices:

(a) conducted in the streamside management zone that are different from practices required by rules adopted under this part;

(b) that are designed for site-specific conditions encountered during a timber sale; and

(c) that are subject to department approval under 77-5-303.

(2) "Department" means the department of state lands provided for in 2-15-3201.

(3) "Forest practices" means, within a timber sale, the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and management of logging slash. The term does not include activities related to

the operation of a Christmas tree farm or nursery that do not involve new road construction.

(4) "Operator" means a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.

(5) "Owner" means an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber.

(6) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.

(7) "Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.

(8) "Streamside management zone" or "zone" means the stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils.

(9) "Timber sale" means a series of forest practices designed to access, harvest, or regenerate trees on a defined land area for commercial purposes.

History: En. Sec. 2, Ch. 608, L. 1991; amd. Sec. 1, Ch. 320, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 320 in definition of timber sale, after "harvest", substituted "or" for "and".

77-5-303. Standards for forest practices in streamside management zones. (1) The following practices are prohibited in a streamside management zone:

(a) broadcast burning;

(b) the operation of wheeled or tracked vehicles except on established roads;

(c) the forest practice of clearcutting;

(d) the construction of roads except when necessary to cross a stream or wetland;

(e) the handling, storage, application, or disposal of hazardous or toxic materials in a manner that pollutes streams, lakes, or wetlands or that may cause damage or injury to humans, land, animals, or plants;

(f) the side-casting of road material into a stream, wetland, or watercourse; and

(g) the deposit of slash in streams or other water bodies.

(2) The department shall publish and distribute the rules implementing the streamside management standards.

History: En. Sec. 3, Ch. 608, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Water quality, Title 75, ch. 5.

Aquatic ecosystem protections, Title 75, ch. 7.

Waste and litter control, Title 75, ch. 10.

77-5-304. Inspection — onsite consultation. (1) The department may inspect forest practices on any federal, state, or private land in this state to assess compliance with the provisions of this part and rules adopted pursuant to this part.

(2) The department may conduct an onsite consultation with an owner or operator to review harvest plans and watershed conditions. During the onsite consultation, the department may review and, if appropriate, approve the proposed use of alternative streamside management practices, as provided in 77-5-303.

History: En. Sec. 4, Ch. 608, L. 1991.

77-5-305. Responsibility for compliance — penalties — administrative orders. (1) (a) Except as provided in subsection (1)(b), it is the responsibility of the owner to ensure compliance with the provisions of this part and rules adopted pursuant to this part.

(b) If a written contract between an owner and an operator specifies that the operator is responsible for compliance with laws relating to forest practices, the operator is considered the responsible party for all enforcement actions taken by the department under this section.

(2) A person who violates a provision of this part, a rule adopted pursuant to this part, or an order issued under this section shall be subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(3) (a) When the department determines that an owner or operator has violated a provision of this part or a rule adopted pursuant to this part and has caused damage to watershed or wildlife resources, the department may serve an order requiring the person responsible for the conduct of forest practices to undertake necessary site rehabilitation within a reasonable period of time stated in the order. The order must specify the nature of the violation and the damage or unsatisfactory condition resulting from the violation.

(b) The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the department. On receipt of the request, the department shall schedule a hearing. Service by mail is complete on the date of mailing.

(c) If, after a hearing, the department finds that a violation has occurred and the watershed or wildlife habitat damage warrants site rehabilitation, it shall affirm or modify the order previously issued. If the department finds that a violation has not occurred or that site rehabilitation is not warranted, it shall rescind the order.

(d) The department may include in an order a provision that the owner or operator immediately cease causing further damage and take immediate action to alleviate the damage or to prevent future damage. The department may institute an action for injunctive relief under Title 27, chapter 19, if the recipient of the order does not comply with it.

(4) Subsection (3) does not prevent the department from seeking voluntary compliance and site rehabilitation through warning, conference, or any other appropriate means.

History: En. Sec. 5, Ch. 608, L. 1991.

77-5-306. Forest stewardship special revenue account. (1) There is a forest stewardship special revenue account.

(2) All fines and penalties levied under 77-5-305 must be deposited in the forest stewardship special revenue account.

(3) The department shall spend funds deposited in the account on activities and programs that promote the stewardship of forest resources.

History: En. Sec. 6, Ch. 608, L. 1991.

77-5-307. Rulemaking. The department shall adopt rules:

(1) implementing each of the management standards provided in 77-5-303;

(2) providing specific direction necessary for owners and operators to understand and comply with the management standards, including additional definition of the streamside management zone and the forest practices permissible within the zone;

(3) providing alternative practices for the standards provided for in 77-5-303; and

(4) regulating the harvest of timber in streamside management zones.

History: En. Sec. 7, Ch. 608, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 4

Community and Urban Forestry Program

77-5-401. Title — purpose. This part may be cited as the "Community and Urban Forestry Act". The purpose of the act is to:

(1) encourage the planting, maintenance, and management of trees in municipalities and counties;

(2) maximize the potential of trees and vegetative cover in improving the quality of the environment;

(3) encourage the coordination of state and local agency activities and maximize citizen participation in the development and implementation of community and urban forestry-related programs;

(4) foster healthy economic activity for the state's community and urban forestry-related businesses through cooperative and supportive contracts with the private business sector;

(5) facilitate the creation of jobs related to community and urban forestry activities, including opportunities for retraining and employing displaced timber resource workers; and

(6) provide meaningful voluntary opportunities for the state's citizens and organizations interested in community and urban forestry activities.

History: En. Sec. 1, Ch. 321, L. 1993.

77-5-402. Definitions. As used in this part, the following definitions apply:

(1) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(2) "Department" means the department of state lands provided for in 2-15-3201.

(3) "Local government" means a city, town, county, consolidated city-county, or other political subdivision of the state.

History: En. Sec. 2, Ch. 321, L. 1993.

77-5-403. Authority — rulemaking. (1) The department may establish and maintain a program in community and urban forestry to accomplish the purpose set forth in 77-5-401. The department may assist local governments in establishing and maintaining community and urban forestry programs and in encouraging persons to engage in appropriate and improved tree management and care.

(2) The department may advise, encourage, and assist local governments in the development and coordination of policies, programs, and activities for the promotion of community and urban forestry.

(3) The department may appoint an advisory committee to assist the department in establishing and carrying out a program in community and urban forestry.

(4) The department may adopt rules to implement this part.

History: En. Sec. 3, Ch. 321, L. 1993.

77-5-404. Special revenue account — donations. (1) There is an account in the state special revenue fund. The department shall deposit in the account money received from gifts, grants, bequests, or endowments from public or private sources, and the funds must be used to carry out the provisions of this part. The money in the account may be spent in accordance with a legislative appropriation.

(2) The department may accept donations of labor, material, seedlings, and equipment from public or private sources for the purpose of carrying out the provisions of this part.

History: En. Sec. 4, Ch. 321, L. 1993.

CHAPTER 6

AGRICULTURAL, GRAZING, AND OTHER SURFACE LEASES

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77-6-104. Renumbered 77-1-209 by Code Commissioner, 1983.
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77-6-107. Leases of land wanted for both agricultural and grazing use.
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77-6-115. Acquisition of water right by lessee.
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77-6-401. Pledge or mortgage of leasehold interest in state lands.
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77-6-504. Lease rentals for part year.
77-6-505. No reduction for summer fallow.
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77-6-507. Formula for fixing annual rental.
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Part Cross-References

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Coal lease — care taken to protect rights of prior surface lessees, 77-3-304.

Oil and gas lease — care taken to protect rights of surface lessees, 77-3-401.

Geothermal leases — compensation for damage to surface lessee, 77-4-107.

77-6-101. Statement of policy. It is hereby declared to be the policy of the state, that in the interest of accomplishing a sustained income for the school and other trust funds to be derived from land grant and other state lands, agricultural and grazing lands and town and city lots shall be appraised from time to time but not less than once during the term of every lease by competent appraisers. The purpose of such appraisals shall be to determine the rental value of agricultural lands and town and city lots, the general condition of the lands, and the carrying capacity of grazing lands.

History: En. Sec. 1, Ch. 207, L. 1945; amd. Sec. 1, Ch. 260, L. 1963; R.C.M. 1947, 81-401.

Cross-References

Market value for interest in state land, Art. X, sec. 11, Mont. Const.

Appraisal of grazing land, 77-6-201.

77-6-102. Surface leases authorized. Under the general direction and control of the board, the department shall lease all agricultural and grazing lands and all town lots, city lots, and lands valuable for commercial development open to leasing upon proper application.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part); amd. Sec. 2, Ch. 488, L. 1985.

Cross-References

Authorization, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials); 77-1-204.

77-6-103. Lease of state land to United States for military purposes authorized. The board, when it considers it in the public interest, may lease to the United States for military purposes any state land, whether such land was received by the state through federal land grants or whether such land consists of so-called "mortgage lands", on such terms and conditions as it considers necessary to promote the public welfare and protect the interests of the state. Rental shall be payable at the end of each year of the lease.

History: En. Sec. 1, Ch. 122, L. 1943; amd. Sec. 25, Ch. 428, L. 1973; R.C.M. 1947, 81-424.

77-6-104. Renumbered 77-1-209 by Code Commissioner, 1983.

77-6-105. Criteria for determining land to be included in single lease. (1) All lands shall be leased in as compact bodies as possible, and care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply or in a form that will make it more difficult to lease the remaining state lands in the section in which they are located.

(2) There may be included under one lease tracts of lands embracing more than one section.

History: (1)En. Sec. 27, Ch. 60, L. 1927; re-en. Sec. 1805.27, R.C.M. 1935; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973; Sec. 81-413, R.C.M. 1947; (2)En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; Sec. 81-407, R.C.M. 1947; R.C.M. 1947, 81-407(part), 81-413(part).

77-6-106. Repealed. Sec. 6, Ch. 488, L. 1985.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(4).

77-6-107. Leases of land wanted for both agricultural and grazing use. If there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, an inspection of the land shall be made by the department at the earliest practical opportunity and a determination made, based on its findings, of the highest and best use which can be made of the land or portions thereof. Any lease of the land subsequent to the applications or bids shall be such as to return to the state revenue commensurate with the highest and best use.

History: En. Sec. 27, Ch. 60, L. 1927; re-en. Sec. 1805.27, R.C.M. 1935; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973; R.C.M. 1947, 81-413(part).

77-6-108. Who may lease. No person may lease state lands, except one who is the head of a family, unless he has attained the age of 18 years. Any such person and any association, company, or corporation authorized to hold lands under lease may lease state lands and may hold more than one lease to state lands.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part).

77-6-109. Duration of lease. Except as provided in 77-6-116, a lease for agricultural or grazing lands may not be for a period other than 5 or 10 years. Leases for city lots, town lots, and lands valuable for commercial development may not exceed 40 years.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part); amd. Sec. 3, Ch. 488, L. 1985; amd. Sec. 2, Ch. 555, L. 1989.

Cross-References

Grazing and agricultural leases not to exceed 10 years, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

77-6-110. Lease expiration dates. Except as provided in 77-6-116, all leases for agricultural lands, grazing lands issued after February 27, 1939, no matter on what date issued, shall expire on February 28 within 10 years from the date on which the lease becomes effective.

History: En. Sec. 24, Ch. 60, L. 1927; re-en. Sec. 1805.24, R.C.M. 1935; amd. Sec. 3, Ch. 65, L. 1939; amd. Sec. 4, Ch. 135, L. 1974; R.C.M. 1947, 81-408; amd. Sec. 3, Ch. 555, L. 1989.

77-6-111. Terminated. Section 2, Ch. 304, L. 1977.

History: En. 81-407.1 by Sec. 1, Ch. 304, L. 1977; R.C.M. 1947, 81-407.1.

77-6-112. Liens on crops and improvements. (1) The state has a lien upon all crops growing upon any of its lands and upon the crops after they have been separated from the lands for any rentals and penalties due or delinquent under the lease on the lands or becoming due during the calendar year in which the crops are harvested, for any year or part of a year that the land has been held or used by the lessee. This lien applies to all buildings, structures, fences, and all other improvements and is prior and superior to all other liens, except threshermen's liens and seed liens specified in 71-3-701 and 71-3-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated.

(2) Any person acquiring any of these crops or improvements takes them subject to this lien. The department or the sheriff of the county in which the land is located may demand of the lessee payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or the department may seize and sell, either at a private or public sale, upon giving notice for not less than 3 days of the sale, sufficient of those crops or improvements, or of both, to pay the amounts due the state together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improvements shall be embodied in all leases for agricultural and grazing lands and for town, city, or other lots.

History: En. Sec. 31, Ch. 60, L. 1927; re-en. Sec. 1805.31, R.C.M. 1935; amd. Sec. 20, Ch. 428, L. 1973; R.C.M. 1947, 81-418.

Cross-References

Liens — generally, Title 71, ch. 3.
Farm laborers' liens, Title 71, ch. 3, part 4.
Construction liens, Title 71, ch. 3, part 5.
Lien for hail insurance, 71-3-711.
Lien for spraying or dusting crops, Title 71, ch. 3, part 9.

77-6-113. Lease conditions — cancellation. (1) It shall be a condition of all leases of agricultural or grazing state lands that:

(a) in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall handle the leased land with the view of maintaining its productivity and minimizing wind and soil erosion and noxious weeds and planting crops with a view of securing the greatest yields of good quality; and

(b) in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall manipulate the numbers, class, distribution, and season of the range use and the handling, feeding, breeding, and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease may not be abused by overgrazing.

(2) For the gross violation of any of these rules, the lease involved shall be canceled by the department, subject to the appeal procedure provided in 77-6-211.

History: En. Sec. 10, Ch. 207, L. 1945; amd. Sec. 4, Ch. 254, L. 1947; amd. Sec. 3, Ch. 27, L. 1971; amd. Sec. 18, Ch. 428, L. 1973; R.C.M. 1947, 81-415.

Cross-References

Renewal leases, 77-6-205.
Effect of competitive bidding, 77-6-508.

77-6-114. Lessee responsible for assessments and taxes for weed control. It shall be the duty of the board in leasing any agricultural state land to provide in such lease that the lessee of lands so leased lying within the boundaries of any noxious weed control district shall assume and pay all assessments and taxes levied by the board of county commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the county treasurer in the same manner as regular personal property taxes are collected. All such state lessees shall be required under the terms of such lease to pay such assessment and tax levy at the same time and manner as other regular personal taxes are paid.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part); amd. Sec. 30, Ch. 607, L. 1985.

Cross-References

County weed control, Title 7, ch. 22, part 21.

Weed control, Title 80, ch. 7, part 7.

Noxious weed management funding, Title 80, ch. 7, part 8.

77-6-115. Acquisition of water right by lessee. (1) The lessee of state lands may at any time prior to 1 year before the expiration of his lease make application to the board for permission to secure a water right to the land under his lease. Such application shall be in writing, shall show how much of the land can be irrigated, the permanency of the water supply, and the probable cost of placing the land under irrigation. If the proposed plan meets with the approval of the board, permission shall be granted the lessee to secure the desired water right for the land and to place the same under irrigation.

(2) If such water right becomes a permanent and valuable improvement, then in case of the sale or lease of the lands to other parties, the former lessee shall be entitled to receive compensation in the amount of the reasonable value thereof, as in the case of other improvements, from the new lessee or the purchaser.

(3) These provisions shall not be so construed as to make the state liable to the lessee for the payment of the cost or value of such irrigation improvements.

History: En. Sec. 33, Ch. 60, L. 1927; re-en. Sec. 1805.33, R.C.M. 1935; R.C.M. 1947, 81-420.

Cross-References

Compensation for improvements, Title 77, ch. 6, part 3.

Water rights — generally, Title 85, ch. 2.

77-6-116. Voluntary termination of lease to allow concurrence with federal conservation reserve program — competitive bidding required. (1) A lessee of state land who wishes to enter the state land in the federal conservation reserve program may request voluntary termination of the remainder of the lease prior to scheduled expiration in order to seek a renewal lease that will run concurrently with the federal program. The lessee shall apply for voluntary termination to the department on a form prescribed by the department. The form must specify:

(a) the name of the lessee and a designation of the leased land for which voluntary termination is sought;

(b) the scheduled termination date of the lease; and

(c) the term of eligibility of the land under the federal conservation reserve program.

(2) Upon receipt of a proper application, the department shall terminate the remainder of the lease. When a request for voluntary termination is granted, the department shall fulfill the notification requirements of 77-6-204, and the lease is subject to the same competitive bidding process as renewal leases under 77-6-205. However, the lessee requesting voluntary termination retains the preference right allowed under 77-6-205.

(3) If a lease renewal is granted pursuant to 77-6-205 to a lessee who has requested voluntary termination under this section, the term of the renewal lease must coincide with the term of eligibility under the federal conservation reserve program.

History: En. Sec. 1, Ch. 555, L. 1989.

Part 2

Leasing Procedure

77-6-201. Appraisal of grazing lands. (1) The department shall appraise the grazing lands owned by the state as to their animal-unit-month carrying capacity and make and preserve records thereof in its office and from time to time reexamine these lands as to their animal-unit-month carrying capacity so as to keep the records thereof in its office reasonably accurate.

(2) In appraising these grazing lands the following factors shall be taken into consideration:

(a) inventory of the forage resources—kind, amount, and location of vegetation;

(b) accessibility and usability of this forage resource as influenced by topography, availability of stock water, and season of usability;

(c) condition of soils—the erosion situation;

(d) other and related resources such as timber, game animals, need for watershed protection;

(e) record of needed improvements and facilities—fuel and stock water, revegetation, rodent control, trails, fences, and the like;

(f) pertinent facts and figures submitted by stockmen living in the area and directors of state grazing districts including the land or in its vicinity;

(g) carrying capacity set for similar land in a state grazing district in which the land is situated.

History: En. Sec. 4, Ch. 207, L. 1945; amd. Sec. 11, Ch. 428, L. 1973; R.C.M. 1947, 81-404.

Cross-References

Citizens entitled to inspect and copy public records, 2-6-102.

Annual grazing rental based on "animal units", 77-6-507.

77-6-202. Lease by competitive bidding — full market value required. When the department receives an application to lease an unleased tract, it shall advertise for bids on the tract. The tract must be leased to the highest bidder unless the board determines that the bid is not in the state's best interest for the reasons set forth in 77-6-205(2). The board may not accept a bid that is below full market value determined by taking into account recommendations of the state land board advisory council. If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease may be issued, at a rental to be determined by the board, to the first bidder willing to pay the board determined rental whose name is selected through a random selection process from all bidders on the tract.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(3); amd. Sec. 3, Ch. 586, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 586 inserted third sentence concerning bid below fair market value; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Effect of competitive bidding, 77-6-508.

77-6-203. Bid deposit. (1) A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to 20% of the annual rental bid in the case of grazing land and an amount equal to $1 per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis.

(2) The department shall retain the deposit of the successful bidder, apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder. The department shall return the deposits of the unsuccessful bona fide bidders. If the department finds a bid has been submitted that is frivolous, forged, or a bad faith bid or a bid submitted for purposes of harassment, the deposit is forfeited. The department shall make a reasonable attempt to notify the bidder in writing of the forfeiture and reasons therefor.

(3) If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited.

(4) The department shall credit all forfeited deposits to the interest and income account of the proper trust.

History: En. Sec. 1, Ch. 185, L. 1963; amd. Sec. 29, Ch. 428, L. 1973; amd. Sec. 1, Ch. 133, L. 1974; R.C.M. 1947, 81-436; amd. Sec. 37, Ch. 281, L. 1983; amd. Sec. 1, Ch. 290, L. 1985.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Public school fund, 20-9-601.

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

Conservation easement for sale of leased cabin or home sites or city or town lots, 77-2-319.

77-6-204. Notification of termination of lease. When a lease expires, is canceled, or is voluntarily terminated under 77-6-116, the department shall immediately notify the holder of the lease and all persons who have expressed an interest in leasing the land during or immediately preceding the term of the expired, canceled, or terminated lease.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part); amd. Sec. 4, Ch. 555, L. 1989.

Cross-References

Lease expiration dates, 77-6-110.

Lease cancellation, 77-6-210.

77-6-205. Renewal leases. (1) A lessee of state land classed as agricultural, grazing, town lot, city lot, or land valuable for commercial development who has paid all rentals due the state or who has voluntarily terminated a lease under 77-6-116 is entitled to have the lease renewed for a period not to exceed the maximum lease period provided in 77-6-109 at any time within 30 days prior to its expiration or within 30 days following voluntary termination if no other applications for lease of the land have been received 30 days prior to the expiration of the lease or within 30 days following voluntary termination. The renewal must be at the full market rental rate established by the board[, taking into account recommendations of the state land board advisory council,] for the renewal period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease. Except as provided in 77-6-212, if other applications have been received, the holder of the lease has the preference right to lease the land covered by the former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section must be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, the lessee may request an administrative hearing. The request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of the land, would cause damage to the tract, or would impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and inform the lessee and competitive bidder of the reduction. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land.

(3) A renewal lease may be canceled pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for a violation by the lessee that occurred during the previous lease term but no more than 3 years prior to the date on which the notice of cancellation required by 77-6-211 is issued. Cancellation procedures instituted but not completed before renewal are applicable to the renewal lease.

(4) A renewal lease may be voluntarily terminated pursuant to 77-6-116. *(Bracketed language in subsection (1) terminates March 1, 1996—sec. 17, Ch. 586, L. 1993.)*

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(1), (2); amd. Sec. 1, Ch. 73, L. 1983; amd. Sec. 4, Ch. 488, L. 1985; amd. Sec. 1, Ch. 687, L. 1985; amd. Sec. 1, Ch. 383, L. 1987; amd. Sec. 5, Ch. 555, L. 1989; amd. Sec. 1, Ch. 43, L. 1991; amd. Sec. 4, Ch. 586, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 586 in (1), in second sentence, substituted "full market rental rate established by the board[, taking into account recommendations of the state land board advisory council,]" for "rental rate provided by law"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References
Lease bidding, 77-6-202.

77-6-206. Withdrawal of lands from leasing. Notwithstanding the foregoing provisions, the board may withdraw any agricultural or grazing land from further leasing for such period as the board determines to be in the best interest of the state. Bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the board at the office of the department.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(4).

77-6-207. Form of lease — bond optional. The general form of lease to state lands shall be prescribed by the board, and no changes in the form for these leases may be made without the approval of the board. All leases shall be issued in duplicate, one copy shall be mailed to the lessee, and one copy shall be preserved by the department. Unless the board decides otherwise, these leases shall be issued without bonds, but the board may require a bond and prescribe the form and conditions thereof whenever it considers it necessary.

History: En. Sec. 29, Ch. 60, L. 1927; re-en. Sec. 1805.29, R.C.M. 1935; amd. Sec. 19, Ch. 428, L. 1973; R.C.M. 1947, 81-416.

77-6-208. Assignment of leases — subleasing — loss of preference right. (1) Leases to state lands may be assigned on blanks prescribed by the department, but an assignment is not binding on the state unless the assignment is filed with the department and approved by it and payment made of the assignment fee under 77-1-302.

(2) Preference must always be given to the applicant who wants the land for the applicant's own individual use, so that the full advantage coming from the leasing and use of the lands may reach those who actually till the soil and so that they are not compelled to pay a higher rental than that due the state.

(3) (a) If a lessee, other than a holder of a commercial lease, subleases state lands on terms less advantageous to the sublessee than the terms given by the state, the department shall cancel the lease, subject to the appeal procedure provided in 77-6-211.

(b) If a lessee subleases state lands without filing a copy of the sublease with the department and without receiving the department's approval, the department may cancel the lease, subject to the appeal procedure provided in 77-6-211.

(c) Upon approval by the department, a commercial leaseholder may sublease state land on terms less advantageous to the sublessee than the terms given to the lessee by the state. However, the department may adjust the lease rate to require that the lessee pay the state a portion of what the sublessee pays to the lessee.

(4) The subleasing of state land may result in loss of the preference right to renew the lease as provided in 77-6-212.

(5) An assignment or series of assignments may not be made to avoid the loss of the preference right under 77-6-212.

History: En. Sec. 32, Ch. 60, L. 1927; re-en. Sec. 1805.32, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1937; amd. Sec. 12, Ch. 207, L. 1945; amd. Sec. 18, Ch. 121, L. 1965; amd. Sec. 3, Ch. 22, L. 1971; amd. Sec. 4, Ch. 27, L. 1971; amd. Sec. 21, Ch. 428, L. 1973; R.C.M. 1947, 81-419; amd. Sec. 2, Ch. 383, L. 1987; amd. Sec. 1, Ch. 96, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 96 near beginning of (3)(a), after "lessee", inserted "other than a holder of a commercial lease"; inserted (3)(c) allowing a commercial leaseholder to sublease state land for a profit; and made minor changes in style.

Cross-References

Renewal leases, 77-6-205.

Pledge or mortgage of leasehold interest, 77-6-401.

77-6-209. Change from grazing lease to agricultural lease. (1) When land is leased for grazing purposes and the lessee desires to cultivate any part of the land, he shall, before doing any such cultivation, make application to the department stating how much land he desires to cultivate and showing the location in the section of the land and agree that for the remainder of the term of the lease the annual rental shall be at the rate of the original lease until such time as the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease shall be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. If any person cultivates lands leased for grazing purposes without first securing the right to do so under this section, the department shall either cancel the lease, subject to the appeal procedure provided in 77-6-211, or require the lessee to pay twice the regular agricultural rental on the land so cultivated in addition to the grazing rental.

(2) The provisions of this section shall be incorporated in every lease.

History: En. Sec. 28, Ch. 60, L. 1927; re-en. Sec. 1805.28, R.C.M. 1935; amd. Sec. 9, Ch. 207, L. 1945; amd. Sec. 1, Ch. 120, L. 1963; amd. Sec. 2, Ch. 27, L. 1971; amd. Sec. 17, Ch. 428, L. 1973; R.C.M. 1947, 81-414.

77-6-210. Cancellation of leases. (1) The department may cancel a lease for any of the following causes:

(a) fraud, misrepresentation, or concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued;

(b) subleasing state land contrary to the provisions of 77-6-212;

(c) using the land for other purposes than those authorized by the lease;

(d) conviction of the lessee for a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or concealing of a dangerous drug on any portion of the unit; however, when a state land lease is held by an association, company, or corporation, conviction of a member of the association, company, or corporation under this subsection does not result in cancellation of the lease unless it appears that the operator, manager, or family in control of the association, company, or corporation is a consenting party or privy to the violation of this subsection;

(e) for any other cause which in the judgment of the department makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state.

(2) Cancellation of a lease under this section does not entitle the lessee to any refund of rentals paid or exemption from the payment of any rentals, penalties, or other compensation due the state.

History: En. Sec. 36, Ch. 60, L. 1927; re-en. Sec. 1805.36, R.C.M. 1935; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973; R.C.M. 1947, 81-422(1); amd. Sec. 3, Ch. 383, L. 1987; amd. Sec. 2, Ch. 319, L. 1989.

Cross-References

Renewal leases, 77-6-205.

Unit of land defined, 77-6-221.

Date when rental due — cancellation for nonpayment, 77-6-506.

77-6-211. Procedure to cancel lease — appeal. (1) When the department cancels a lease pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210, it shall immediately notify the lessee by certified mail of the cancellation and the reasons therefor. The date of cancellation is 15 days from the date the notice is received by the lessee.

(2) The lessee has 15 days after the receipt of the notice to file with the department a notice of appeal for a hearing before the board. If notice of appeal is filed, the lease remains in effect until the decision of the board. Within 10 days after notice of appeal has been filed, the department shall set the time and place of hearing and shall so notify the lessee. The board may, after 10 days' notice to the lessee, change the time and place of hearing.

(3) Under rules it adopts, the board shall conduct an open hearing to determine whether the lease should be reinstated. The burden of proof is on the lessee to show why the lease should not be canceled. If the lease is reinstated, all of the lessee's rights and privileges thereunder shall be preserved; if not, the land shall be open for re-leasing as provided by law. If the board finds that the terms of the lease have been violated but in its judgment the violation is not serious enough to warrant cancellation, it may reinstate the lease and assess a penalty up to three times the annual rental against the lessee.

History: En. Sec. 36, Ch. 60, L. 1927; re-en. Sec. 1805.36, R.C.M. 1935; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973; R.C.M. 1947, 81-422(2), (3).

Cross-References

Open hearings required, 2-3-203.

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Notification of interested parties of termination, 77-6-204.

77-6-212. Loss of preference right — cancellation of lease — subleasing — pasturing agreements. (1) Except as provided in subsections (3) and (4), a lessee of state land classed as agricultural or grazing land may not exercise the preference right provided in 77-6-205 if he subleases the land for more than 2 years in the term of the lease.

(2) The department shall cancel a lease of state agricultural or grazing land if the lessee subleases the land for more than 3 years during the term of the lease, unless the sublease is made between members of a family as provided in subsection (3).

(3) A lessee under subsection (1) or (2) may sublease the land for a period of not more than 5 years without losing the preference right or the lease to state land if, during the term of the lease, the land is subleased only to a spouse, son, daughter, adopted child, or sibling of the lessee.

(4) The lessee does not lose the preference right or right to lease because of subleasing as provided under this section if:

(a) the sublease is one-third or less acres of the lease; or

(b) the sublease is considered to be a pasturing agreement and is approved in writing by the department prior to the initiation of the agreement.

(5) For purposes of this section, a sublease may not be considered a pasturing agreement unless the lessee personally retains management and physical control of the land and livestock. "Management" means but is not limited to:

(a) providing all costs for improvements, land maintenance, and range renovation, if range renovation is approved by the department;

(b) making all decisions regarding rotation or other placement of livestock on state land;

(c) making all decisions regarding turn-in and turn-out dates of the livestock on state land; and

(d) making all decisions regarding proper range management, including placement of water, fencing, and salt.

(6) A lessee of state land classified as agricultural or grazing land shall lose the preference right provided in 77-6-205 upon conviction of a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or concealing of a dangerous drug on any portion of the unit. When a state land lease is held by an association, company, or corporation, conviction of a member of the association, company, or corporation under this subsection does not result in loss of lease preference unless it appears that the operator, manager, or family in control of the association, company, or corporation is a consenting party or privy to the violation of this subsection.

History: En. Sec. 4, Ch. 383, L. 1987; amd. Sec. 3, Ch. 319, L. 1989.

Cross-References

Unit of land defined, 77-6-221.

77-6-213 through 77-6-220 reserved.

77-6-221. Unit of land defined. As used in this part, "unit" means privately deeded land or land leased from the state, or a combination of the two, that is under the control of one operator, manager, or family.

History: En. Sec. 1, Ch. 319, L. 1989.

Part 3

Improvements

77-6-301. Improvements authorized. A lessee of state lands may place upon the lands a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of it. These improvements may consist of fences, cultivation, improvement of the land itself, irrigation ditches, sheds, wells, reservoirs, and similar improvements.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

Cross-References

Water rights as an improvement, 77-6-115.

77-6-302. Compensation for improvements — actual costs. (1) When another person becomes the lessee of the lands, the person shall pay to the former lessee the reasonable value of these improvements at the time the new lessee takes possession. The reasonable value may not be less than the full market value of the improvements.

(2) If the former lessee is unable to produce records establishing the reasonable value or if the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value must be ascertained and fixed as provided in 77-6-306.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part); amd. Sec. 5, Ch. 586, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 586 in (1) inserted second sentence concerning reasonable value as full market value of improvements; in (2), after "lessee", inserted "is unable to produce records establishing the reasonable value or if the former lessee"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Lease expiration dates, 77-6-110.

77-6-303. Determination of compensation. (1) In determining the value of these improvements, consideration shall be given to their original cost, their present condition, their suitableness for the uses ordinarily made of the lands on which they are located, and to the general state of cultivation of the land, its productive capacity as affected by former use, and its condition with reference to the infestation of noxious weeds. Consideration shall be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee.

(2) However, if any of the improvements consists of breaking (meaning the original plowing of the land) and 1 year's crops have been raised on the land after the breaking, the compensation for the breaking may not exceed $2.50 per acre, and if two or more crops have been raised on the land after the breaking, the breaking shall not be considered as an improvement to the land.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

77-6-304. Removal of improvements. The former lessee may, however, remove the movable improvements on the land and dispose of them to parties other than the lessee. If he fails to remove the improvements from the land within 60 days from the date of the expiration of his lease, all of the improvements become the property of the state unless the department for good cause grants additional time for their removal.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

77-6-305. Settlement regarding improvements prerequisite to issuance of new lease. Before a lease is issued to the new lessee, the lessee shall show that the former lessee has been paid the value of the improvements pursuant to 77-6-302 or as determined under 77-6-306 or that the former lessee elects to remove the improvements.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part); amd. Sec. 6, Ch. 586, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 586 near middle, after "improvements", substituted "pursuant to 77-6-302" for "as agreed upon by them", before "determined" deleted "fixed and", and after "77-6-306" deleted "or that he has offered to pay the value of the improvements as so fixed and determined"; and made minor changes in style. Amendment effective July 1, 1993.

77-6-306. Arbitrators to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed on state lands desires to sell these improvements to the new lessee and they are unable to agree on the value of the improvements pursuant to 77-6-302, the value must be ascertained and fixed by three arbitrators, one of whom is appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators so appointed. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the commissioner, the commissioner may appoint an arbitrator for that party. An arbitrator appointed by the commissioner has the same duties and powers as if appointed by one of the parties. The value of the improvements must be ascertained and fixed pursuant to 77-6-302.

(2) The reasonable compensation that the arbitrators may fix for their services must be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements ascertained and fixed is binding on both parties. If either party is dissatisfied with the valuation, the party may within 10 days appeal from the decision to the department, which shall examine the records pertaining to the costs of the improvements, and except as provided in subsection (4), its decision is final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in the proportion as, in its judgment, justice may demand.

(4) If either party is dissatisfied with the valuation fixed by the department, the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court of Lewis and Clark County for judicial review of the decision.

History: En. Sec. 22, Ch. 60, L. 1927; re-en. Sec. 1805.22, R.C.M. 1935; amd. Sec. 4, Ch. 260, L. 1963; Sec. 81-406, R.C.M. 1947; redes. 81-421.1 and amd. by Sec. 13, Ch. 428, L. 1973; R.C.M. 1947, 81-421.1; amd. Sec. 1, Ch. 38, L. 1983; amd. Sec. 7, Ch. 586, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 586 in (1), near middle of first sentence after "value", substituted "of the improvements pursuant to 77-6-302" for "thereof" and at end of last sentence, after "fixed", substituted "pursuant to 77-6-302" for "as this part provides"; in (3), in second sentence after "examine the", inserted "records pertaining to the costs of the"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Arbitration, Title 27, ch. 5.

Part 4

Pledges and Mortgages of Leasehold Interests

77-6-401. Pledge or mortgage of leasehold interest in state lands. Any lessee of a grazing or agricultural lease of state lands is hereby authorized to pledge said lease or mortgage his leasehold interest in said lands.

History: En. Sec. 1, Ch. 52, L. 1947; R.C.M. 1947, 81-425.

Cross-References

Mortgages of real property, Title 71, ch. 1, part 2.

Pledges — generally, Title 71, ch. 2.

Assignment of leases, 77-6-208.

77-6-402. Filing with board required. The pledgee of such lease or the mortgagee of such leasehold interest shall, within 30 days after receipt of the pledge agreement or mortgage, file it or a certified copy thereof with the department.

History: En. Sec. 2, Ch. 52, L. 1947; amd. Sec. 21, Ch. 121, L. 1965; amd. Sec. 4, Ch. 22, L. 1971; amd. Sec. 26, Ch. 428, L. 1973; R.C.M. 1947, 81-426.

77-6-403. Transfer of lease. (1) Except as provided in subsection (2), upon due proof that a person has acquired through foreclosure or conveyance the pledgor's or mortgagor's leasehold interest, the board shall transfer the lease to that person, who is subject to all the conditions, obligations, and liabilities and entitled to all the rights and privileges provided for in the lease. To authorize transfer of a lease, a decree of foreclosure must specifically refer to the lease or the leased premises, but neither the board nor the department is required to be named as a party to the action. The plaintiff shall, however, file a copy of the complaint with the department at the time it is filed with the court.

(2) Nothing in this section may be construed to require the board to complete the transfer of a lease to an assignee whom the board considers unqualified as a lessee of state lands.

History: En. Sec. 3, Ch. 52, L. 1947; R.C.M. 1947, 81-427; amd. Sec. 1, Ch. 679, L. 1991.

Cross-References

Liens on crops and improvements, 77-6-112.

77-6-404. Proof of termination of pledge or mortgage to be filed. The lessee of any grazing or agricultural lease of or leasehold interest in state lands which is pledged or mortgaged as provided in this part shall, within 30 days after payment of the indebtedness secured thereby or within 30 days after the pledge agreement is terminated or the leasehold interest is released from the mortgage, file with the department proof of that fact.

History: En. Sec. 4, Ch. 52, L. 1947; amd. Sec. 20, Ch. 121, L. 1965; amd. Sec. 5, Ch. 22, L. 1971; amd. Sec. 27, Ch. 428, L. 1973; R.C.M. 1947, 81-428.

Part 5

Rental Provisions

77-6-501. Agricultural leases. (1) As to agricultural lands, all leases except lease renewals upon which the lessee has made improvements at the lessee's expense, as provided in subsection (3), must be continued or made upon a crop share rental basis of not less than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. The board may, however, approve special crop share rentals of less than one-fourth for high production cost crops such as but not limited to potatoes and sugar beets or for high production cost methods when these methods would result in more income to the state. The board may not delegate the authority to approve special crop share rentals.

(2) Except in the case of cash lease renewals under subsection (3), if it is in the best interests of the state, the department may authorize a lease upon other basis than crop share, but in these cases the rental must at least equal the value of the usual landlord's share prevailing in the district under similar circumstances, and the department shall set forth in the records the conditions of the case and the rental to be charged.

(3) In cases in which the lessee has made substantial improvements for irrigation purposes to the lease at the lessee's own expense, the department shall authorize a cash lease renewal at not less than $15 an acre on the portion of the lease that has been improved.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part); amd. Sec. 1, Ch. 54, L. 1985; amd. Sec. 1, Ch. 168, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 168 near beginning of (1) inserted exception clause; at beginning of (2) inserted exception clause; inserted (3) authorizing cash lease renewal in cases in which lessee has made substantial irrigation improvements at lessee's own expense; and made minor changes in style.

Cross-References

Effect of competitive bidding, 77-6-508.

77-6-502. Grazing leases. (1) The rental rate for leasing all state grazing lands must[, taking into account recommendations of the state land board advisory council,] attain full market value based upon the appraised animal-unit-month carrying capacity of the land as provided in 77-6-507.

(2) If the board raises the rentals for state grazing lands during the term of any leases of grazing land that are not issued as a result of competitive bidding, the lessee shall, for the years after the increase becomes effective, pay the increased rental, and the terms of grazing leases must provide for the increase. *(Bracketed language in subsection (1) terminates March 1, 1996—sec. 17, Ch. 586, L. 1993.)*

History: (1)En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; Sec. 81-402, R.C.M. 1947; (2)En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; Sec. 81-407, R.C.M. 1947; R.C.M. 1947, 81-402(part), 81-407(part); amd. Sec. 8, Ch. 586, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 586 in (1), after "lands must", inserted "[, taking into account recommendations of the state land board advisory council,] attain full market value"; in (2) substituted "board" for "legislature"; and made minor changes in style. Amendment effective July 1, 1993.

Applicability: Section 16(3), Ch. 586, L. 1993, provided: "[Sections 8 and 12] [77-6-502 and 77-6-507] apply to leases issued or renewed after July 1, 1993."

Cross-References

Leases by competitive bidding, 77-6-202.

77-6-503. Leases of city lots, town lots, and commercial property. As to town lots, city lots, and land valuable for commercial development owned by the state, the fair rental value thereof shall be determined from time to time by the department with the approval of the board and a record made thereof, and such town or city property or land valuable for commercial development may be leased at its current appraised rental value for terms not to exceed 40 years.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part); amd. Sec. 5, Ch. 488, L. 1985.

77-6-504. Lease rentals for part year. Lease rentals for agricultural or grazing state land, where the lease term begins after February 28 in the initial year of the lease, shall be for the whole of the yearly rate for the fractional part of the initial year if the lease term begins prior to July 1 in such fractional part of year, and for one-half the yearly rate for such fractional part of the year if the lease term begins after June 30 in the initial year and prior to the succeeding February 28.

History: En. Sec. 7, Ch. 207, L. 1945; R.C.M. 1947, 81-410.

Cross-References

Expiration date — leases, 77-6-110.

77-6-505. No reduction for summer fallow. No credit or reduction or refund in rental shall be allowed any lessee of agricultural or grazing state land on account of summer fallow.

History: En. Sec. 8, Ch. 207, L. 1945; R.C.M. 1947, 81-411.

77-6-506. Date when rental due — penalty — cancellation for nonpayment. (1) For grazing leases, the grazing portion of leases containing both agricultural and grazing land, and agricultural leases not based on a crop share, the rental for the first year of the lease shall be paid at or before the time of the execution of the lease; however, in the case of leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1 shall be paid and collected at the time of issuing the lease. If the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of the lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the United States is the lessee, is due and payable before March 1. If the rental is not paid before March 1, a $25 penalty shall be imposed on the lessee. If the full rental and the $25 penalty are not paid by April 1, the entire lease is canceled.

(2) For agricultural leases and the agricultural portion of leases containing both grazing and agricultural land, when the rental is paid on a crop share basis or on a crop share/cash basis, the rental is due in cash on or before November 15 of the year in which the crop is harvested. If the rental is not paid on or before November 15 of the year of crop harvest, a $25 penalty shall be imposed on the lessee. If the full rental and the $25 penalty are not paid on or before December 31 of the year in which the crop is harvested, the entire lease is canceled. The department may extend the deadline in writing. If the

lessee does not make the rental payment by the date of extension, the entire lease is canceled. Any rental payment made after November 15 of the year in which the crop is harvested, including payment made after an extension of the deadline, must include the $25 penalty.

(3) For all state land leases and licenses other than those described in subsections (1) and (2), the department shall impose a $25 penalty for failure to make a rental payment by any deadline established by statute, rule, or in the lease or license.

(4) At least 2 weeks prior to the final deadline for payment under subsection (1) or (2), the department shall send by certified mail to each lessee who has not made payment a letter notifying the lessee that the lease is canceled if payment and the $25 penalty are not received by the final deadline. The notice shall be sent to the lessee at the address given in the lease.

(5) When a lease is canceled under subsection (1) or (2), the department shall notify the lessee of the cancellation by letter at the address given in the lease. The land is then open for lease to applicants.

(6) The penalties collected pursuant to this section must be deposited into the same trust account as the rentals from the state land to which the penalties apply.

History: En. Sec. 26, Ch. 60, L. 1927; re-en. Sec. 1805.26, R.C.M. 1935; amd. Sec. 1, Ch. 197, L. 1943; amd. Sec. 2, Ch. 22, L. 1971; amd. Sec. 15, Ch. 428, L. 1973; R.C.M. 1947, 81-412; amd. Sec. 1, Ch. 473, L. 1985; amd. Sec. 1, Ch. 187, L. 1989; amd. Sec. 1, Ch. 140, L. 1991.

Cross-References

Lease to United States for military purposes authorized, 77-6-103.

Bid deposit and forfeiture requirements, 77-6-203.

Notification of interested parties when lease canceled, 77-6-204.

Cancellation of lease for other reasons, 77-6-210.

77-6-507. Formula for fixing annual rental. (1) In this section:

(a) "animal unit" means one cow, one horse, five sheep, or five goats;

(b) "animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one animal unit for 1 month.

(2) The board shall establish the per annum rental rate per section of all grazing lands that are the property of the state by multiplying a factor established by the board pursuant to 77-6-502 times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(3) The carrying capacity of the land to be used in the above formula must be in accordance with the determinations of the department made under 77-6-201.

(4) The average price per pound of beef cattle on the farm in Montana must be taken from statistics published by the United States department of agriculture current at the time of computation of the rental or from other reliable sources current at that time.

(5) In establishing the rental rate described in subsection (2), the board shall consider applicable elements that include but are not limited to those set forth in 77-1-106.

History: En. Sec. 2, Ch. 190, L. 1949; amd. Sec. 1, Ch. 229, L. 1951; amd. Sec. 1, Ch. 284, L. 1959; amd. Sec. 6, Ch. 260, L. 1963; amd. Sec. 1, Ch. 97, L. 1973; amd. Sec. 28, Ch.

428, L. 1973; R.C.M. 1947, 81-433; amd. Sec. 1, Ch. 259, L. 1979; amd. Sec. 1, Ch. 38, L. 1991; amd. Sec. 12, Ch. 586, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 586 in (2), after "establish the", deleted "minimum" and after "multiplying" substituted "a factor established by the board pursuant to 77-6-502" for "six"; and inserted (5) concerning elements to be considered in establishing rental rate. Amendment effective July 1, 1993.

Applicability: Section 16(3), Ch. 586, L. 1993, provided: "[Sections 8 and 12] [77-6-502 and 77-6-507] apply to leases issued or renewed after July 1, 1993."

Cross-References

Appraisal of grazing land, 77-6-201.

77-6-508. Effect of competitive bidding. Whenever competitive bidding establishes a rental price higher than the rental price established by the board, the board in leasing the lands shall incorporate in the lease conservation requirements as are considered necessary for the protection of the grass or forage crops.

History: En. Sec. 3, Ch. 190, L. 1949; R.C.M. 1947, 81-434; amd. Sec. 9, Ch. 586, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 586 after "established by the" substituted "board" for "above formula"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Competitive bidding — when required, 77-6-202.

TITLES 78 AND 79

RESERVED

DOES NOT
CIRCULATE